



FIQH OF JIHAD

UNDERSTANDING THE OBLIGATION

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مسيرة شتر

فقه الجهاد

FIQH OF JIHĀD UNDERSTANDING THE OBLIGATION

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CONTENTS

Introduction	10
Foreword to the Second Edition	19
Chapter 1: The Definition of <i>Fiqh</i> of <i>Jihād</i>	21
The Definition of <i>Jihād</i>	21
The Definition of <i>Fiqh</i>	26
<i>Aḥkām Taklīfī</i> : The Rulings Related to the Actions of the Slave	28
Chapter 2: The Legislation of <i>Jihād</i> with the Self	32
From the Qur'ān	32
From the <i>Sunnah</i>	35
From the <i>Ijmā'</i>	37
Chapter 3: Stages of the Legislation of <i>Jihād</i>	38
The First: The (Makkan) Stage of Patience	39
The Second: The Stage of Permission	41
The Third: The Stage of Defensive <i>Jihād</i>	43
The Forth: The Stage of Offensive <i>Jihād</i>	44
Chapter Summary	52
Chapter 4: The Divisions of <i>Jihād</i>	53
Defensive <i>Jihād</i>	53
The Ruling of Defensive <i>Jihād</i>	54
Offensive <i>Jihād</i>	57
The Ruling of Offensive <i>Jihād</i>	58
The Ruling of the one who seeks to Prevent the Believers from <i>Jihād</i> against the Disbelievers	59
Chapter Summary	60
Chapter 5: The Ruling Regarding Preparation for <i>Jihād</i>	62
Preparation as an on-going Obligation	67
Chapter Summary	70

Chapter 6: When Does <i>Jihād</i> Become an Individual Obligation?	71
If the Enemy Attacks, or Prepares to Attack	71
If the <i>Imām</i> Orders a General March	74
If a Muslim is present on the Battlefield when the Two Armies Meet	76
If a Muslim has Particular Skills that are Needed by the <i>Mujāhidīn</i>	78
The Enlisted <i>Mujāhid</i>	79
Chapter Summary	84
Chapter 7: Conditions for <i>Jihād</i> Becoming Obligatory Upon an Individual	85
Islām	85
Soundness of Mind	87
Maturity	88
Being a Male	89
Freedom	95
Ability	95
Note: <i>Jihād</i> with the Wealth	106
Permission of the Parents	109
Absence of Debt	111
Chapter Summary	115
Chapter 8: Is the Permission of the Ruler a (Valid) Condition for the Obligation of <i>Jihād</i>?	116
Chapter Summary	128
Chapter 9: The Wisdom and Purpose Behind <i>Jihād</i>	129
Raising the Word of Allāh to the Uppermost	130
Aiding the Oppressed	133
Repelling Aggression and Defending Islām	134
Chapter Summary	136
Chapter 10: The Categories of People Fought	137
The Disbelievers	138
Reason for Differences Between the Scholars	145
The Reason for Fighting the Disbelievers	151

Chapter 11: (The Categories of People Fought)	
The Apostates	164
Definition of Apostasy	164
The Ruling Concerning Fighting the Apostate	166
The Ruling Regarding the Children of the Apostate	176
The Effects of Apostasy on the Spouse	177
How does the Apostate Repent and Return to Islām?	182
Chapter 12: (The Categories of People Fought)	
The Rebels	185
The Ruling Concerning Fighting the Rebels	190
Note: Regarding Fighting the Rebels	192
Conditions for Fighting the Rebels	196
Those Killed Whilst Fighting the Rebels	202
Chapter Summary	204
Chapter 13: Instances when it is Permissible to Revolt against the Ruler	205
Apostasy	207
Abandoning the Prayer	208
The Abandonment of Ruling According to the <i>Sharī'ah</i>	210
Deterioration of the Mental Faculties	211
Transgression or Oppression	212
Chapter Summary	215
Chapter 14: Those who it is not allowed to Intentionally Kill from Amongst the Disbelievers	216
Women, Children, and the Insane	217
The Elderly	219
Monks	221
Chapter Summary	227
Chapter 15: Instances when it is Permissible to Kill Women, Children, the Elderly, Monks, and Others	228
Night Attacks and Raids	229
Human Shields	233
Those who Mingle with, and Reside Among the Polytheists	239

Chapter Summary	245
Chapter 16: Instances when it is Permissible to Intentionally Target Those Usually Prohibited from Killing from Amongst the Disbelievers	246
Those who Fight	246
Those who Curse Allāh and His Messenger ﷺ	247
The Leaders of the Disbelievers	248
Women who Expose themselves Attempting to Distract the <i>Mujāhidīn</i>	249
Apostasy	249
Retaliation	250
As a means of Weakening the Disbelievers	252
Chapter Summary	256
Chapter 17: The Ruling Regarding Prisoners of War	257
Execution	258
How the Prisoner is to be Executed, and the Ruling Regarding Mutilation	260
The Permissability of Mutilation as an Act of <i>Qisās</i>	263
The Ruling Regarding Beating the Prisoner if there is a Benefit in it	267
Freeing and Ransoming the Prisoners	272
The Ruling Regarding Ransoming the Prisoners for Wealth	278
The Ruling Regarding the Prisoner that Embraces Islām	282
Chaper Summary	288
Chapter 18: Issues Related to the Prisoner of War	289
The Ruling Regarding the Prisoner who Kills Himself Fearing the Enemy will Kill or Toture Him	289
The Ruling Regarding the one who Kills Himself to Protect Information	293
Warning	305
The Female who is Forced to Commit Fornication	307
Freeing the Muslim POWs by Bribing the Disbelievers	310
Miscellaneous Issues Regarding the Muslim POW	314
Chapter Summary	316

Chapter 19: Rulings Regarding Covenants of Security	318
Definition of the Covenant of Security	325
The Characteristics of those Entitled to Issue Covenants of Security	329
The Authority to Issue Covenants of Security Possessed by the <i>Imām</i> , Leaders, and Individual Muslims	334
Characteristics of the Covenant of Security, and what Constitutes its Issuance with Regards to Speech and Actions	335
Actions on the Part of the Disbelievers that Nullify the Covenant of Security	350
Categories of Disbelievers in Relation to Covenants and Treaties	353
The Termination of Covenants and Treaties	360
Chapter Summary	368
Chapter 20: Responding to a Misconception: The Incidents of Abū Jandal and Abū Baṣīr رَضِيَ اللَّهُ عَنْهُمَا	370
Chapter Summary	384
Chapter 21: The Visa and its Relationship with the Covenant of Security	385
Definition of the Visa	385
The Islamic Ruling Regarding the Visa	386
Chapter Summary	410
Chapter 22: The Rulings Regarding Spies	412
Definition of Spying	414
The Ruling Regarding the (Enemy) Spy	417
The <i>Ḥarbī</i> Spy	417
The Muslim Spy	419
The Ruling Regarding the Disbelieving Spy with a Covenant	431
Chapter Summary	437
Chapter 23: <i>Ghanīmah</i> and its Rulings	439
The Ruling Regarding <i>Ghanīmah</i>	441
Division of the <i>Ghanīmah</i>	446
Wealth Considered to be Included in the <i>Ghanīmah</i>	447

Note: Regarding Taking Disbelieving Women as Concubines	450
The Ruling Regarding Wealth of the Muslims Reclaimed from the Disbelievers	464
Entitlement to the <i>Ghanīmah</i> and its Conditions	465
The Place from which the Discretionary Share is Taken	467
The <i>Ghanīmah</i> and the Method of its Division	471
<i>Salb</i>	479
<i>Fay'</i>	485
<i>Nafl</i>	492
The Ruling of <i>Ghulūl</i> and Taking from the <i>Ghanīmah</i> Prior to its Division	497
The Punishment for the one who Commits <i>Ghulūl</i>	504
Chapter Summary	508
Chapter 24: The Obligation of Appointing a Leader	510
Chapter Summary	521
Chapter 25: The Fear Prayer	522
What Qualifies as 'Fear' in the Case of the Fear Prayer?	533
Description of the Fear Prayer	539
The Command to Carry Weapons During the Fear Prayer	550
Levels of Inability when Performing the Prayer when Confronted by the Enemy	554
Chapter Summary	560
Chapter 26: The Ruling on Seeking Assistance from the Disbelievers in Fighting the Enemy	562
The Ruling on Seeking Assistance from the Disbelievers in Fighting Muslims	592
Chapter Summary	601
Chapter 27: The Ruling Regarding those who Spread Rumours Weakening the Morale of the Muslims	603
Social Media and <i>Irjāf</i>	608
Chapter Summary	619
Chapter 28: The Ruling Regarding Fleeing from Battle	620

Futher Considerations	634
Chapter Summary	638
Chapter 29: Infiltration Operations	640
Concealing one's Islām for Such Operations	648
Warning	654
Chapter Summary	657
Chapter 30: Self-Sacrificial Operations	658
Verdicts from Contemporary Scholars Regarding	
Martyrdom Operations	685
Chapter Summary	693
Chapter 31: Kidnapping	695
The Permissability of Kidnapping the <i>Ahl al-Ḥarb</i>	697
Chapter Summary	708
Chapter 32: Assassinations	709
The Permissability of Assassinating the <i>Ḥarbī</i>	710
Chapter Summary	722
Chapter 33: Sabotage Operations	723
Chapter Summary	730
Appendix:	732
'Umar's Contract with <i>Ahl adh-Dhimmah</i>	732
The Story of Durayd	734
Bibliography	736

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

All praises belong to Allāh, and may His Peace and Blessings be upon His final Prophet and Messenger

مُقَدِّمَةٌ

INTRODUCTION

All Praise is due to Allāh. We praise Him, seek His help, and ask His forgiveness. We seek refuge in Allāh from the evil of our own souls, and the adverse consequences of our deeds. Whomsoever Allāh guides, there is none that can misguide him, and whomever He misguides, then none can guide him.

I bear witness and testify that there is no deity worthy of worship except for Allāh; He is alone, having no partners. I bear witness and testify that Muḥammad ﷺ is His perfect worshiper, and Messenger.

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ حَقَّ تُقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنتُمْ

مُسْلِمُونَ﴾

O you who have believed, fear Allāh as He should be feared and do not die except as Muslims [in submission to Him].¹

¹ Sūrah Āl ‘Imrān (3):102

﴿يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا
وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ
اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا﴾²

*O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allāh, through whom you ask one another, and the wombs. Indeed Allāh is ever, over you, an Observer.*²

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا ﴿٧٠﴾ يُصْلِحْ لَكُمْ
أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا
عَظِيمًا﴾³

*O you who have believed, fear Allāh and speak words of appropriate justice. He will [then] amend for you your deeds and forgive you your sins. And whoever obeys Allāh and His Messenger has certainly attained a great attainment.*³

As for what follows; the best Speech is the Speech of Allāh, and the best guidance is the guidance of Muḥammad ﷺ. The worst of affairs are the newly invented matters, and every innovation is a misguidance, and every misguidance is in the Fire (of Hell).⁴

² Sūrah an-Nisā' (4):1

³ Sūrah al-Aḥzāb (33):70-71

⁴ This is a translation of *Khuṭbah al-Hājah*, which the Prophet ﷺ would give whenever he started a speech. See al-Albānī's '*Khuṭbah al-Hājah*' (al-Maktab al-Islāmī, Damascus, 1980) for more details

Without exaggeration, the issue of *Jihād* is probably one of the most misunderstood acts of worship today, despite the numerous verses, *Aḥādīth*, statements of the Companions رضي الله عنهم, and works of the scholars after them detailing its virtues, rulings, and severe threat(s) directed at those who abandon this mighty and lofty deed.

This is primarily due to the enemies of Allāh's attacks on the great religion of Islām, in an attempt to transform the religion that Allāh revealed through His final Prophet and Messenger Muḥammad ﷺ, to one that suits their whims and desires. As Allāh ﷻ says:

﴿يُرِيدُونَ أَن يُطْفِئُوا نُورَ اللَّهِ بِأَفْوَاهِهِمْ وَيَأْبَى اللَّهُ إِلَّا أَن يُتِمَّ
نُورَهُ وَلَوْ كَرِهَ الْكَافِرُونَ﴾⁵

They want to extinguish the light of Allāh with their mouths, but Allāh refuses except to perfect His light, although the disbelievers dislike it.⁵

Therefore, despite the efforts of the disbelievers, the knowledge of every aspect of Allāh's religion must come to light and spread amongst mankind. *Jihād* in the cause of Allāh is but one such aspect.

Amongst the reasons for the writing of this work, is the fact that *Jihād* is one of the greatest forms of worship and obligations in Islām, as can be seen in the narration collected by at-Tirmidhī رحمه الله, wherein the Messenger of Allāh ﷺ said to Mu'ādh ibn Jabal رضي الله عنه:

⁵ *Sūrah at-Tawbah* (9:32)

أَلَا أُخْبِرُكَ بِرَأْسِ الْأَمْرِ كُلِّهِ وَعَمُودِهِ، وَذِرْوَةِ سَنَامِهِ؟ قُلْتُ: بَلَى يَا رَسُولَ اللَّهِ، قَالَ: «رَأْسُ الْأَمْرِ الْإِسْلَامُ، وَعَمُودُهُ الصَّلَاةُ، وَذِرْوَةُ سَنَامِهِ الْجِهَادُ»

“Shall I not tell you about the head of the entire matter, its pillar, and its peak?” [...] “The head of the matter is Islām, its pillar is the prayer, and its peak is Jihād.”⁶

Not only is *Jihād* from the greatest of deeds in the sight of Allāh ﷻ, it is also from the most obligatory deeds after belief in Allāh. In addition, the knowledge of its ruling takes the same ruling, indicated by the principle of *Fiqh*, outlined by al-Bukhārī رَحِمَهُ اللَّهُ in his *Ṣaḥīḥ*, wherein he states:

(باب) العلم قبل القول والعمل

“It is essential to know a thing first before saying or acting upon it.”⁷

Ibn Qayyim رَحِمَهُ اللَّهُ emphasised on this saying, “A person who acts without knowledge is like someone who travels without a guide, and it is known that a person like this will more likely be destroyed than saved. In any case, even if we would suppose that that he would survive, by agreement, his deed would never be considered as something praiseworthy, rather he would be considered blameworthy according to the people of intellect.”⁸

Moreover, seeking the knowledge related to *Jihād* is a type of *Jihād* itself, as alluded to by ibn Qayyim when he said, “*Jihād*

⁶ *Jāmi' at-Tirmidhī: The Book of Faith* (2616) and *Sunan ibn Mājah: The Book of Supplication* (3973)

⁷ *Ṣaḥīḥ al-Bukhārī: The Book of Knowledge; (Chapter 10) It is essential to know a thing first before saying or acting upon it*

⁸ *Miftāḥ Dār as-Sa'ādah* (1/82&83)

(*an-Nafs*) [...] is that he struggles against it (i.e. the self) by learning guidance.”⁹

While numerous works exist in the Arabic language on the subject, none (as far as we are aware) is available in the English language, despite English speaking Muslims worldwide numbering in the tens, if not hundreds of millions.

Shaykh al-Islām ibn Taymiyyah رحمته الله says, “And the religion of Islām (decrees) that the sword must follow the Book. So if knowledge of the Book and the *Sunnah* appears, and the sword follows that, the authority of Islām will be established. However, if the sword agrees with the Book sometimes and contradicts it at other times, then the religion of whoever behaves in this manner will be according to that.”¹⁰

It is said that ‘Everything has a shortcut and the shortcut to Paradise is *Jihād*.’ Hence, it may be said that waging *Jihād* in accordance with one’s knowledge can be the believers’ shortcut to Paradise. On the other hand, if waged incorrectly, it may be the believers’ shortcut to the Fire - such as in the case of the one that sheds the blood and takes wealth that Allāh ﷻ has made inviolable. Therefore, the wielding of the weapons necessary to wage *Jihād*, is indeed a double-edged sword for the believer - if done sincerely and according to the command of Allāh ﷻ and the *Sunnah* of His Messenger ﷺ, then Allāh has promised such believers one of the two great rewards - either victory or martyrdom.

Abū Hurayrah رضي الله عنه narrates, that the Messenger of Allāh ﷺ said:

⁹ *Zād al-Ma’ād* (1/603), and *Provisions for the Hereafter (Abridged)* (p.249)

¹⁰ *Majmū’ al-Fatāwā* (20/393)

تَكْفَلَ اللَّهُ لِمَنْ جَاهَدَ فِي سَبِيلِهِ، لَا يُخْرِجُهُ مِنْ بَيْتِهِ إِلَّا جِهَادًا فِي سَبِيلِهِ، وَتَصْدِيقُ كَلِمَتِهِ، بَأَنْ يُدْخِلَهُ الْجَنَّةَ، أَوْ يَرْجِعَهُ إِلَى مَسْكَنِهِ الَّذِي خَرَجَ مِنْهُ، مَعَ مَا نَالَ مِنْ أَجْرٍ أَوْ غَنِيمَةٍ

*“Allah has guaranteed the Mujāhid, who leaves from his home with no purpose other than to fight in the cause of Allāh, and believing in Allāh’s words, to either enter him into Paradise or to return him home with reward or Ghanīmah (i.e. spoils).”*¹¹

However, if the same weapons are wielded insincerely, and contrary to the command of Allāh and the *Sunnah*, then belief in Allāh ﷻ alone will not save the transgressor from Allāh’s threat and promised punishment.

Abū Hurayrah رضي الله عنه narrates that he heard the Messenger of Allāh ﷺ say:

إِنَّ أَوَّلَ النَّاسِ يُقْضَىٰ يَوْمَ الْقِيَامَةِ عَلَيْهِ رَجُلٌ اسْتَشْهَدَ، فَأُتِيَ بِهِ فَعَرَفَهُ نَعَمَهُ فَعَرَفَهَا، قَالَ: فَمَا عَمِلْتَ فِيهَا؟ قَالَ: قَاتَلْتُ فِيكَ حَتَّى اسْتَشْهَدْتُ، قَالَ: كَذَبْتَ، وَلَكِنَّكَ قَاتَلْتَ لِأَنْ يُقَالَ: جَرِيءٌ، فَقَدْ قِيلَ، ثُمَّ أُمِرَ بِهِ فَسُحِبَ عَلَىٰ وَجْهِهِ حَتَّى أُلْقِيَ فِي النَّارِ

*“The first whom Allāh will judge on the Day of Judgment is a martyr. Allāh will show him his blessings on him and would then ask him how did you use these blessings? The martyr would say, ‘I fought for you until I was killed.’ Allāh would say, ‘You are lying. You fought in order to be recognized as a fighter and you got that.’ Then Allāh would order that he be dragged upon his face to the Hellfire...”*¹²

¹¹ *Ṣaḥīḥ al-Bukhārī: The Book of Khumus* (3123) and *Ṣaḥīḥ Muslim: The Book of Governance* (1876)

¹² *Ṣaḥīḥ Muslim: The Book of Governance* (1905)

In addition, Allāh ﷻ says:

﴿وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا
وَعَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا﴾¹³

Whoever kills a believer intentionally - his recompense is Hell, wherein he will abide eternally, and Allāh has become angry with him and has cursed him and has prepared for him a great punishment.¹³

Thus, it is imperative that the believer who understands the obligation of *Jihād*, purifies his intentions, then acquaints himself with its rulings, lest he be led astray by Satan, incurring Allāh's wrath and anger after having originally set out seeking only His pleasure. As Shaykh 'Abdullāh 'Azzām رَحِمَهُ اللَّهُ said, "If the weapon is carried without *Taqwā*, you will become a gang of highway robbers."

Additionally, ibn Taymiyyah رَحِمَهُ اللَّهُ says in *Fatāwā al-Kubrā* (5/539), "It is *Wājib* (obligatory) regarding matters concerning *Jihād*, to take (rulings) from those possessing both sound religion and an understanding of the reality on the ground. Not from those who possess only a theoretical and superficial understanding of the religion, or from those who do not know or understand the reality on the ground."

Adherence to principle would alleviate many of the problems the youth of *Jihād* are exposed to today from many of the so-called people of knowledge. From the misconceptions regarding the status, or obligatory nature of *Jihād* today, to the counterproductive *Fatāwā* of some of those who understand the *Shar'ī* aspects, but have insufficient knowledge regarding

¹³ *Sūrah an-Nisā'* (4):93

military affairs and the prophetic *Sunnah* regarding the affairs of warfare.

In keeping with the above, this work aims to present an introduction to the *Fiqh* of *Jihād*, which will offer the English speaking readers a foundation on the subject, and an answer to the misconceptions of the ignorant, and those who intentionally seek to misguide the believers regarding the true nature of the exalted ‘*Ibādah* of *Jihād*.¹⁴

...

As is evident from the preceding words, this work, based on the framework of ad-Dimyāṭī’s *Fiqh al-Jihād*, does not concern itself with detailing the virtues accompanying and surrounding *Jihād*. However, if the reader is interested in this, then it is suggested ibn an-Nuḥḥās’s رَحِمَهُ اللهُ work *Mashari al-Ashwaq ila Masari al-Ushaaq*, which has been translated into the English language as an appendix to Syed Qutb’s رَحِمَهُ اللهُ *Milestones* (Special Edition) is referred to.

‘Abdullāh ash-Shaybānī

1st Muḥarram 1440 *Hijrī* / 10th September 2018

¹⁴ ‘*Ibādah*: (عبادة) Worship. *Shaykh al-Islām* ibn Taymiyyah (d.728 *Hijrī*) defined it as, “‘*Ibādah* is obedience to Allāh in compliance with what He ordered upon the tongues of His messengers.” He also said, “‘*Ibādah* is a collective noun for every deed including speech and actions, whether they be apparent or hidden, that Allāh loves and is pleased with.” (*Fatḥ al-Majīd*, p.17)

All of the reference numbers for the *Aḥādīth* quoted within this work are as they are found in the original Arabic works, which, in most cases, differ from the numbering schemes employed in their (translated) English counterparts.¹⁵

Likewise, for the benefit of the non-Arabic speaking readers, I have endeavoured to include, along with the references for the original Arabic works relied upon in this volume, references for their English translations, if I am aware of their existence, and all success lies with Allāh ﷻ.

¹⁵ For both Arabic and English referencing and translations for the *Aḥādīth* contained in the works of *Ṣaḥīḥ al-Bukhārī*, *Ṣaḥīḥ Muslim*, *Sunan Abī Dāwūd*, *Sunan ibn Mājah*, *Sunan an-Nasā'ī*, *Jāmi' at-Tirmidhī*, *Shamā'il at-Tirmidhī*, *Riyādh as-Sāliḥīn*, *Bulūgh al-Marām*, *Imām Mālik's al-Muwaṭṭa'*, and al-Bukhārī's *Adāb al-Mufrad*, refer to Sunnah.com

FOREWORD TO THE SECOND EDITION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

All praises belong to Allāh, and may His Peace and Blessings be upon His final Prophet and Messenger

Before embarking on this project, I had initially intended to prepare and complete the work you are now reading in one installment. Nevertheless, due to a number of factors, the foremost of them being the fact that no one is promised a long life; it was decided to release what was compiled, thereafter release the rest of the work as it reached its completion. Due to a number of additional commitments and projects, coupled with unforeseen circumstances known beforehand only to Allāh ﷻ, the completed work took considerably longer than anticipated, and to Allāh belongs all praise.

For the second part of this work, a number of contemporary works and research papers, such as Abū ‘Abdullāh al-Muhājir’s *Masā’il min Fiqh al-Jihād*, and Shaykh Abū Yaḥyā al-Lībī’s *رحمة الله* works¹⁶ on the subjects of *al-Isti’ānah* (seeking the help of the disbelievers in war) and the ruling concerning the Muslim Spy, were particularly helpful - and may Allāh ﷻ reward them abundantly.

A number of minor corrections, adjustments, and additions have been made to *Fiqh of Jihād Part 1*, mostly revolving around spelling and editing, or adding statements aiding understanding of the texts. A section on the *Aḥkām Taklīfī* has been added to

¹⁶ "المورد العذب لبيان حكم الاستعانة بالكفار في الحرب" و"المعلم في حكم الجاسوس المسلم"

the first chapter on definitions, as I was unhappy about relying upon the English equivalents alone for terms denoting the rulings of actions, as it leaves considerable room for ambiguity and misunderstanding. Consequently, all of the English terms for these rulings have been either been substituted completely, or have been kept alongside their Arabic transliterations.

Likewise, by the permission of Allāh, the painstaking task of fully cross-referencing and verifying all of the quotes, translations, and earlier works relied upon was performed.

Lastly, after Allāh ﷻ, I would like to thank my family for all their support, advice, encouragement, and assistance for this work in particular, and throughout all of my work in general. In addition, I would like to make mention of all of my brothers in Islām - teachers, peers, and students - who have encouraged, supported, and benefited me throughout the years

May Allāh ﷻ give them all, as well as the rest of the *Mujāhidīn* - East and West - the ability to wage *Jihād* in His cause the way it ought to be waged, keep them steadfast upon His *Dīn* until they meet Him whilst He is pleased with them, and grant them all *Shahādah*.

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَصْبِرُوا وَصَابِرُوا وَرَابِطُوا وَاتَّقُوا اللَّهَ
لَعَلَّكُمْ تُفْلِحُونَ﴾

***O you who have believed, persevere and endure and remain
stationed and fear Allāh that you may be successful.***

‘Abdullāh ash-Shaybānī

3rd Shawwāl 1441 *Hijrī* / 26th May 2020

CHAPTER 1

تعريف فقه الجهاد

THE DEFINITION OF FIQH OF JIHĀD

The word *Jihād* has both linguistic and *Shar'ī* definitions.

The linguistic definition, according to *Lisān al-'Arab* is, “Fighting the enemy. It involves using all effort in words and deeds.” While according to *Mu'jam matn al-Lughah*, “*Jihād* is commonly used to refer to waging war for the sake of *al-Ḥaqq* (the truth).”

While it is true that the concept of *Jihād* does encompass struggling against ones (evil) desires (*Jihād an-Nafs*) and speaking the truth,¹⁷ as *Imām* ibn Qayyim رَحِمَهُ اللهُ has outlined. He said, “(it is clear that) *Jihād* is on four levels: *Jihād* of the self

¹⁷ In reference to the *Ḥadīth* recorded in *Sunan Abū Dāwūd: The Book of al-Malāḥim* (4344), *Sunan ibn Mājah: The Book of Tribulations* (4011), *Sunan an-Nasā'ī: The Book of Fighting [The Prohibition of Bloodshed]* (4029), and *Jāmi' at-Tirmidhī: The Book of Tribulations*, in which the Messenger of Allāh ﷺ said:

أَفْضَلُ الْجِهَادِ كَلِمَةُ عَدْلٍ عِنْدَ سُلْطَانٍ جَائِرٍ

“The best *Jihād* is a word of justice in front of a tyrannical ruler.”

[...] Struggling against Satan [...] Struggling against the disbelievers and hypocrites [...] (and) *Jihād* against the perpetrators of injustice, evil deeds and innovations.”¹⁸ However, in the Qur’ān and the *Sunnah*, the term primarily refers to waging war against the disbelievers for the sake of Allāh’s Word reigning supreme. As such, Allāh ﷻ says:

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ فَإِنَّ آتَهُمْ فَإِنَّ اللَّهَ بِمَا يَعْمَلُونَ بَصِيرٌ﴾ (٣٩)

*And fight them until there is no fitnah [i.e. polytheism/disbelief] and [until the religion, all of it, is for Allāh]*¹⁹

﴿انْفِرُوا خِفَافًا وَثِقَالًا وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ فِي سَبِيلِ اللَّهِ ذَٰلِكُمْ خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ﴾ (٤١)

*Go forth, whether light or heavy, and strive with your wealth and your lives in the cause of Allāh. That is better for you, if you only knew.*²⁰

﴿يَا أَيُّهَا النَّبِيُّ جَاهِدِ الْكُفَّارَ وَالْمُنَافِقِينَ وَاغْلُظْ عَلَيْهِمْ وَمَأْوَاهُمْ جَهَنَّمُ وَبِئْسَ الْمَصِيرُ﴾ (٧٣)

*O Prophet, fight against the disbelievers and the hypocrites and be harsh upon them. And their refuge is Hell, and wretched is the destination.*²¹

¹⁸ *Zād al-Ma’ād* (1/603&604) and *Provisions for the Hereafter* (Abridged), (pgs.249&250)

¹⁹ *Sūrah al-Anfāl* (8):39

²⁰ *Sūrah at-Tawbah* (9):41

²¹ *Sūrah at-Tawbah* (9):73

Additionally, the Messenger of Allāh ﷺ commanded the believers:

جَاهِدُوا الْمُشْرِكِينَ بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ وَأَلْسِنَتِكُمْ

“Fight against the polytheists with yourselves, your wealth, and your tongues.”²²

He ﷺ also said:

مَنْ قَاتَلَ لِيَتَكُونَ كَلِمَةُ اللَّهِ هِيَ الْعُلْيَا فَهُوَ فِي سَبِيلِ اللَّهِ

“The one who fights to make the word of Allāh the highest (superior) is the one fighting for the sake of Allāh.”²³

Consequently, when the scholars of *Fiqh* (Islamic Jurisprudence) use the term *Jihād* in their works, especially if it is accompanied by the phrase (في سبيل الله) ‘*in the cause of Allāh*,’ they refer almost exclusively to fighting. As such, unless otherwise stated, in this work the term *Jihād* refers to *Jihād bi’n-Nafs* (*Jihād* with the self, i.e. fighting).²⁴

²² *Sunan Abū Dāwūd: The Book of Jihād* (2504), *Sunan an-Nasā’ī: The Book of Jihād* (3097), *Musnad Ahmad* (12268), and *Sahīh ibn Hibbān* (4708). Authenticated by al-Albānī in *Sahīh Abī Dāwūd* (2262)

²³ *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (2810) and *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1904)

²⁴ Not to be confused with *Jihād an-Nafs* (جهاد النفس) - the *Jihād* of the self - which means to struggle against one’s self. Ibn Qayyim says about it, “*Jihād* of the self and this is also one four levels: The first (is) that he struggles against it by learning guidance. The second (is) that he struggles against it by acting upon that guidance once he has learnt it. The third (is) that he struggles against it by calling people to the guidance, for if he does not, he will be one of those who conceal what Allāh has revealed. The fourth (is) that he does so with patient perseverance in the face of the hardships which afflict one who is calling to Allāh and that he bears all of this for Allāh.”

While he describes *Jihād bi’n-Nafs* (جهاد بالنفس) - *Jihād* with the self - as, “Struggling against the disbelievers and hypocrites; and this is on four levels. (1) With the heart, (2) with the tongue (i.e. by preaching), (3) with ones

In Islamic terminology, the scholars of *Fiqh* have come up with a number of similar definitions, of which some will follow:

The Ḥanafī's in *ad-Dur al-Mukhtār ma'a Ḥāshiyah ibn 'Ābidīn* (4/121) have said, "*Jihād* is calling to the religion of truth (i.e. Islām) and fighting whoever does not accept this call in reality (i.e. by becoming Muslim) or accept its (authority to) rule by paying the *Jizyah* or conducting a treaty."²⁵

Al-Imām al-Kasānī رحمه الله says in *Bidā'i' aṣ-Ṣanā'i'* (7/97), "It is to completely sacrifice, employing all ones power (in) fighting for the cause of Allāh, with the self, the wealth, and with the tongue, or with other than them..."

Ibn al-Kamāl رحمه الله says in *ad-Dur al-Mukhtār ma'a Ḥāshiyah ibn 'Ābidīn* (4/121), "It is to completely sacrifice (whilst) fighting for the cause of Allāh, directly or indirectly (with deception, money, opinion, or the intellect), increasing the numbers of the Muslims, or by other than these."

Ibn 'Arafah al-Mālikī رحمه الله says, "*Jihād* is the Muslim fighting to raise the word of Allāh against the disbeliever who does not have a covenant..."²⁶

Ibn Hārūn رحمه الله says in *Mawāhib al-Jalīl* (3/347), "*Jihād* is fighting the enemy to raise the word of Islām."

The *Shāfi'ī* school say, "The fighting of the disbelievers in order to bring victory to Islām"²⁷

wealth, and (4) with the body (i.e. by fighting). And *Jihād* against the disbelievers is more particularly by the hand, while *Jihād* against the hypocrites is more particularly by the tongue." (*Zād al-Ma'ād* [1/603&604], and *Provisions for the Hereafter*, pgs.249&250)

²⁵ *Qawā'id al-Fiqh* (p.255)

²⁶ *Sharḥ Ḥudūd ibn 'Arafah* (1/141), and *Mawāhib al-Jalīl* (3/347)

²⁷ *Ḥāshiyah al-Jamal 'alā Sharḥ al-Minhaj* (5/179)

In *Fatḥ al-Bārī: Kitāb al-Jihād* (6/3) *Hāfidh* ibn Ḥajar al-‘Asqalānī رَحِمَهُ اللهُ says, “Expending all efforts and energy in fighting the disbelievers.”

Imām aṣ-Ṣan’ānī رَحِمَهُ اللهُ in *Subul as-Salām: Kitāb al-Jihād* (2/1035) says, “Expending all efforts and energy in fighting the disbelievers or the transgressors.”²⁸

The *Hanbalī* School say, “Fighting the disbelievers specifically, as opposed to fighting the transgressing Muslims (*al-Bughāh*) or the bandits...”

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللهُ, in *Majmū’ al-Fatāwā* (10/191) relates a broader definition than those that have proceeded, saying, “*Jihād* in its truest sense is striving (to the best of one’s ability) to attain all that Allāh loves, whether through belief(s) or righteous actions. It is (also) to strive to repel all that Allāh dislikes, whether perpetrated by the disbelievers, the wicked, or the sinners.”

Therefore, with all the preceding definitions in mind, the believer is better posed to understand the statement of the Messenger of Allāh when he said ﷺ:

جَاهِدُوا الْمُشْرِكِينَ بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ وَلِسَانِكُمْ

“Wage *Jihād* against the polytheists with yourselves, your wealth, and your tongues.”²⁹

²⁸ Also in ‘*Awn al-Ma’būd* (7/111)

²⁹ *Sunan Abī Dāwūd: The Book of Jihād* (2504), *Sunan an-Nasā’ī: The Book of Jihād* (3097), *Musnad Ahmad* (12268), and *Ṣaḥīḥ ibn Hibbān* (4708). Authenticated by al-Albānī in *Ṣaḥīḥ Abī Dāwūd* (2262)

تعريف الفقه

THE DEFINITION OF FIQH ³⁰

Fiqh has been loosely translated into English as ‘Islamic law’ or ‘Islamic jurisprudence,’ and so has *Sharī’ah*, but these terms are not synonymous either in the Arabic language, or to the Muslim scholar.

Fiqh literally means ‘the true understanding of what is intended.’ An example of this usage can be found in the Prophet’s statement

ﷺ:

مَنْ يُرِدِ اللَّهُ بِهِ خَيْرًا يُفَقِّهْهُ فِي الدِّينِ، وَلَا تَزَالُ عَصَابَةٌ مِنَ الْمُسْلِمِينَ يُقَاتِلُونَ عَلَى الْحَقِّ ظَاهِرِينَ عَلَى مَنْ نَاوَأَهُمْ، إِلَى يَوْمِ الْقِيَامَةِ

“To whomsoever Allāh wishes good, He gives the *Fiqh* (true understanding) of the Religion. And there will always remain a group from the Muslim fighting upon the Truth, manifest, until the Day of Resurrection.” ³¹

Technically, however, *Fiqh* refers to ‘the science of deducing Islamic laws from evidence found in the sources of Islamic law.’ By extension, it also means the body of Islamic laws so deduced.

Sharī’ah, literally means, a waterhole where animals gather daily to drink, or the straight path, as in the noble verse in *Sūrah al-Jāthiyah* (45:18):

³⁰ The section of this that deals with the definitions of *Fiqh* and *Sharī’ah* has been adapted from Dr. Bilal Philips’ work, *The Evolution of Fiqh*

³¹ *Ṣaḥīḥ Muslim: The Book of Governance* (2554), and this is his wording. *Ṣaḥīḥ al-Bukhārī: Holding Fast to the Qur’ān and Sunnah* (6767), and in *at-Tawhīd* (6905). *Musnad Aḥmad* (17433), and *ad-Dārimī* (2325)

﴿ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ
الَّذِينَ لَا يَعْلَمُونَ﴾

Then we put you on a straight path (Sharī'ah) in you affairs, so follow it and do not follow the desires of those who have no knowledge.

Islamically however, it refers to the sum total of Islamic laws which were revealed to the Prophet Muḥammad ﷺ, and which are recorded in the Qur'ān as well as deducible from the Prophet's ﷺ divinely guided lifestyle (called the *Sunnah*).

The distinction from the previous two definitions, deduces the following three differences:

- 1) *Sharī'ah* is the body of revealed laws found both in the Qur'ān and in the *Sunnah*, while *Fiqh* is a body of laws deduced from the *Sharī'ah* to cover specific situations not directly treated in *Sharī'ah* law.
- 2) *Sharī'ah* is fixed and unchangeable, whereas *Fiqh* changes according to the circumstances under which it is applied.
- 3) The laws of the *Sharī'ah* are, for the most part, general: they lay down basic principles. In contrast, the laws of *Fiqh* tend to be specific: they demonstrate how the basic principles of *Sharī'ah* should be applied in given circumstances.

Therefore, the *Fiqh* of *Jihād* refers the body of laws deduced from the *Sharī'ah* covering the subject of *Jihād* and its related subjects.

الْأحكام تَكْلِيفِي
AḤKĀM TAKLĪFĪ:
THE RULINGS RELATED TO THE ACTIONS OF
THE SLAVE

Aḥkām Taklīfī refers to those acts connected to a request to do, to abstain from, or a choice is present between doing them or abstaining from them.³²

Meaning, every act has a *Hukm* (ruling) emplaced by Allāh ﷻ in the Qur’ān or through the words of His final Messenger Muḥammad ﷺ.³³ Alternatively, such a ruling can take place through the *Ijmā’* (consensus), or through the *Ijtihād* of a scholar, such as in the case of *Qiyās*.³⁴

They are called *Taklīfī* as they are related to the actions of the *Mukallaf*, who is the person deemed responsible (for their

³² Refer of *al-Wajīz fī Uṣūl al-Fiqh* (p.26)

³³ Indeed Allāh said about him is *Sūrah an-Najm* (53:3&4):



Nor does he speak from [his own] inclination. It is not but a revelation revealed.

In his *Tafsīr* (9/306&307) ibn Kathīr says, “Allāh said, ***Nor does he speak from [his own] inclination***, asserting that nothing the Prophet ﷺ utters is of his own desire or wish, ***It is not but a revelation revealed***, means, he only conveys to the people what he was commanded (by his Lord) to convey, in its entirety without additions or deletions.”

³⁴ *Qiyās* (القياس) is the process of the scholar drawing a similarity between an issue that does not have a *Sharī’ah* text that speaks about it directly, and an issue that does have a text mentioning it. The *Hukm* (ruling) from the latter is then applied to the former due to both issues sharing the same ‘*Illah* (reason for the ruling). Refer to *The Foundations of the Knowledge of the Usul* (pp.101-112)

actions) in Islām. The *Mukallaf* is someone encompassing two characteristics:

- 1) They are *Bāligh* (i.e. over the age of puberty), and
- 2) They are '*Āqil* (i.e. of sound mind)

According to the majority of scholars, such rulings are five, meaning that every act will have one of five rulings. They are:

- ***Wājib* / *Farḍ*** (obligatory/compulsory/mandatory): These are acts, the performance of which has been commanded by the Legislator (i.e. Allāh). The *Mukallaf* that performs them is rewarded, while if they are not performed, whilst the ability to do so exists, the *Mukallaf* is deemed sinful and is deserving of Allāh's punishment.³⁵
- ***Mustahab* / *Mandūb*** (recommended): These are acts, the performance of which has been commanded by the Legislator, however they are not *Wājib*. The *Mukallaf* that performs them is rewarded, while if they are not performed, there is no sin or threat of punishment involved.
- ***Mubāḥ*** (permissible): These acts, in and of themselves, are neither commanded, nor are they forbade. As such, whether the *Mukallaf* chooses to perform or abandon them, there is no reward or sin involved.

³⁵ However, Allāh may well forgive the *Mukallaf* and not punish them if the abandonment of the act does not amount to *Kufr* (disbelief) due to His noble words (4:48):

﴿إِنَّ اللَّهَ لَا يَغْفِرُ أَنْ يُشْرَكَ بِهِ وَيَغْفِرُ مَا دُونَ ذَلِكَ لِمَنْ يَشَاءُ﴾

Indeed, Allāh does not forgive association with Him, but He forgives what is less than that for whom He wills.

- **Makrūh** (disliked/discouraged): This ruling is the opposite of *Mustahab/Mandūb*. These are acts, the abstinence of which has been commanded by the Legislator, however they are not *Ḥarām*. The *Mukallaf* that performs abstains is rewarded, while if they are performed, there is no sin or threat of punishment involved.
- **Ḥarām** (forbidden/prohibited/not permissible): This ruling is the opposite of *Wājib/Farḍ*. These are acts, the abstinence of which has been commanded by the Legislator. The *Mukallaf* that abstains from them is rewarded, while if they are performed, the *Mukallaf* is deemed sinful and is deserving of Allāh's punishment.³⁶

The *Aḥkām Taklīfī* have been mentioned here, despite this not being a work on *Uṣūl al-Fiqh* (the Foundations of *Fiqh*), due to the need of the reader to be familiar with the Arabic terms for the *Aḥkām* (i.e. *Wājib*, *Mustahab*, *Mubāḥ*, *Makrūh*, and *Ḥarām*), so their English equivalents may be dispensed with, along with their potential for ambiguity. Indeed, Allāh ﷻ has commanded the believers:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا ۖ يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ ۗ وَاللَّهُ وَرَسُولُهُ فَقَدْ فَازَ فَوْزًا عَظِيمًا﴾

O you who have believed, fear Allāh and speak words of Qawlan Sadīdan. He will [then] amend for you your deeds and forgive you your sins. And whoever

³⁶ Refer to previous footnote. The Arabic for these terms are:

(الواجب/الفرض، المستحب/المندوب، المباح، المكروه، والحرام)

***obeys Allāh and His Messenger has certainly attained
a great attainment.***³⁷

³⁷ *Sūrah al-Aḥzāb* (33):70-71. Commenting on Allāh's Statement, *Imām* ibn Kathīr says in his *Tafsīr* (8/53), "He orders them to speak (with) ***Qawlan Sadīdan***, meaning to speak in a straightforward manner with no crookedness or distortion. He promises them that if they do that, He will reward them by making their deeds righteous..."

CHAPTER 2

مَشْرُوعِيَّةُ الْجِهَادِ بِالنَّفْسِ

THE LEGISLATION OF JIHĀD WITH THE SELF

من الكتاب

From the Qur'ān

The verses that establish the obligation of *Jihād* in the Qur'ān are numerous, however from them are:

﴿أُذِنَ لِلَّذِينَ يُقَاتَلُونَ بِأَنَّهُمْ ظُلِمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ﴾³⁸

*Permission [to fight] has been given to those who are being fought, because they were wronged. And indeed, Allāh is competent to give them victory.*³⁸

³⁸ *Sūrah al-Ḥajj* (22):39

﴿كُتِبَ عَلَيْكُمُ الْقِتَالُ وَهُوَ كُرْهُ لَكُمْ وَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَهُوَ خَيْرٌ لَكُمْ وَعَسَى أَنْ تُحِبُّوا شَيْئًا وَهُوَ شَرٌّ لَكُمْ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ﴾³⁹

*Fighting has been enjoined upon you while it is hateful to you. But perhaps you hate a thing and it is good for you; and perhaps you love a thing and it is bad for you. And Allāh knows, while you know not.*³⁹

﴿فَإِذَا انسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ إِن تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوْا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾⁴⁰

*And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakāh, let them [go] on their way. Indeed, Allāh is Forgiving and Merciful.*⁴⁰

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾⁴¹

³⁹ Sūrah al-Baqarah (2):216

⁴⁰ Sūrah at-Tawbah (9):5

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islām] from those who were given the Scripture - [fight] until they give the Jizyah willingly while they are humiliated.⁴¹

And:

﴿أَنفِرُوا خِفَافًا وَثِقَالًا وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنفُسِكُمْ فِي سَبِيلِ
اللَّهِ ذَٰلِكُمْ خَيْرٌ لَّكُمْ إِن كُنتُمْ تَعْلَمُونَ﴾⁴²

Go forth, whether light or heavy, and strive with your wealth and your lives in the cause of Allāh. That is better for you, if you only knew.⁴²

⁴¹ Sūrah at-Tawbah (9):29

Many translators of the Qur’ān translate this last sentence as, ***until they give the Jizyah willingly while they are humbled***, however ibn Kathīr says in his *Tafsīr* (4/405-407) on the verse under the heading, *Paying the Jizyah is a Sign of Kufr and Disgrace*:

“Allāh said, ***‘until they give the Jizyah’***, if they do not choose to embrace Islām, ***‘willingly’***, in defeat and subservience, ***‘and feel themselves subdued’***, disgraced, humiliated and belittled. Therefore, Muslims are not allowed to honour the people of *Dhimma* or elevate them above Muslims, for they are miserable, disgraced and humiliated. Muslim recorded from Abū Hurayrah رضي الله عنه that the Prophet ﷺ said, *‘Do not initiate the Salām to the Jews and Christians, and if you meet any of them in a road, force them to its narrowest alley.’* This is why the Leader of the faithful ‘Umar ibn al-Khaṭṭāb رضي الله عنه, demanded his well-known conditions be met by the Christians, these conditions that ensured their continued humiliation, degradation and disgrace...”

⁴² Sūrah at-Tawbah (9):41

من السنة From the *Sunnah*

Like the Qur'ān, the *Sunnah* is replete with narrations concerning, and establishing the obligatory nature of *Jihād*: In both *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim*, 'Abdullāh ibn 'Umar رضي الله عنه narrates that the Prophet ﷺ said:

أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنَّ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ، عَصَمُوا مِنِّي دِمَاءَهُمْ، وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا، وَحِسَابُهُمْ عَلَى اللَّهِ

“I have been ordered to fight against the people until they testify that there is no deity worthy of worship except Allāh and that Muḥammad is the Messenger of Allāh, establish the prayer and give the zakāh. Then, if they do that, their blood and wealth will be protected from me – except in accordance with the right of Islām. And their reckoning will be with Allāh, the Exalted.”⁴³

In *Sunan Abī Dāwūd: The Book of Jihād* (2504) Anas ibn Mālīk رضي الله عنه narrated that the Prophet ﷺ said:

جَاهِدُوا الْمُشْرِكِينَ بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ وَالسَّنَتِيكُمْ

⁴³ *Ṣaḥīḥ al-Bukhārī: the Book of Faith* (25), *Ṣaḥīḥ Muslim: the Book of Faith* (22), *Jāmi' at-Tirmidhī: the Book of Faith* (2608), *Sunan an-Nasā'ī: the Book of Jihād* (3090), *Sunan Abī Dāwūd: the Book of Jihād* (2642), *Sunan Ibn Mājah: the Book of the Sunnah* (75), *Musnad Aḥmad, al-Bayhaqī, Ibn Hibbān, al-Darqutnī, and Muwaṭṭa' Imām Mālīk*. This *Ḥadīth*, and its various versions reach the level of *Mutawātir* (the absolute strongest type of *Ḥadīth*)

Chapter 2: The Legislation of Jihād with the Self

“Fight against the polytheists with yourselves, your wealth, and your tongues.”⁴⁴

In *Ṣaḥīḥ Muslim: The Book of Governance* (1910) Abū Hurayrah رضي الله عنه narrated that the Messenger of Allāh ﷺ said:

مَنْ مَاتَ وَلَمْ يَغْزُ وَلَمْ يُحَدِّثْ بِهِ نَفْسَهُ مَاتَ عَلَى شُعْبَةٍ مِنْ نِفَاقٍ

“Whoever dies without fighting, or having made the firm intention to do so, has died upon a branch of hypocrisy.”⁴⁵

⁴⁴ Also in *Sunan an-Nasā'ī: The Book of Jihād* (3096), *Musnad Ahmad* (12268), and *Saḥīḥ ibn Hibbān* (4708). Authenticated by al-Albānī in *Saḥīḥ Abī Dāwūd* (2262)

⁴⁵ Also in *Sunan Abī Dāwūd: The Book of Jihād* (2502), and *Sunan an-Nasā'ī: The Book of Jihād* (3097)

من الإجماع

From the *Ijmā'* (consensus)⁴⁶

Numerous scholars have cited the existence of the consensus on the legislation and obligatory nature of *Jihād*. Amongst them were Ibn Ḥazm, al-Qāḍī Abū Muḥammad ‘Abd al-Wahhāb,⁴⁷ Ibn Rushd,⁴⁸ and *Shaykh al-Islām* Ibn Taymiyyah رحمه الله.⁴⁹

Ibn Ḥazm رحمه الله says in *Marātib al-Ijmā'* (p.119), “It is agreed that if the polytheists and the people of disbelief descend upon the Muslims, then resisting and preventing them from entering the heartlands of Islām, its (outlying) towns, fortresses, or its sanctities (i.e. women children, etc.) through fighting is an obligation upon every free, mature and able bodied Muslim.”

⁴⁶ *Ijmā'* (الإجماع): ash-Shawkānī رحمه الله stated in *Irshād al-Fuhūl* (p.68), “The agreement of the *Mujtahidīn* (i.e. those who are qualified to deduce Islamic rulings from the texts) of the *Ummah* of Muhammad ﷺ after his death in any given area upon any given matter. What is meant by agreement is sharing; either in a belief, statement, or action.” It is considered as the third source of Islamic evidence, after the Qur’ān and then the *Sunnah*. Allāh says in *Sūrah an-Nisā'* (4:115):

﴿وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّىٰ وَنُصْلِهِ جَهَنَّمَ ۚ وَسَاءَتْ مَصِيرًا﴾¹¹⁵

And whoever opposes the Messenger after guidance has become clear to him and follows other than the way of the believers - We will give him what he has taken and drive him into Hell, and evil it is as a destination.

⁴⁷ Refer to *al-Ma'ūnah* (1/601)

⁴⁸ Refer to *Bidāyah al-Mujtahid* (1/278)

⁴⁹ Refer to *al-Fatāwā al-Kubrā* (3/535)

CHAPTER 3

مراحل تشريع الجهاد

STAGES OF THE LEGISLATION OF JIHĀD

Like a number of other acts of worship, such as fasting and the prohibition of intoxicants, the enactment of the legislation concerning *Jihād* was not done all at once. Rather it was revealed in a gradual and piecemeal type fashion - as new commandments were revealed, older ones were superseded or were abrogated. As such, Allāh ﷻ says about this in *Sūrah al-Baqarah* (2:106):

﴿مَا نَنْسَخْ مِنْ آيَةٍ أَوْ نُنسِهَا نَأْتِ بِخَيْرٍ مِّنْهَا أَوْ مِثْلَهَا أَلَمْ تَعْلَمْ
أَنَّ اللَّهَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ﴾

We do not abrogate a verse or cause it to be forgotten except that We bring forth [one] better than it or similar to it. Do you not know that Allāh is over all things competent?

Ignorance of this has given way to the accursed Satan to lead many people astray, as they applied, gave precedence, took out of context, and ultimately issued rulings according to abrogated verses, especially in issues related to *Jihād*.

The scholars generally divide the stages of *Jihād* into four stages:

المرحلة الأولى: مرحلة صبر

THE FIRST:

THE (MAKKAN) STAGE OF PATIENCE

This was the stage of restraint from fighting, turning away from the disbelievers and pardoning them. This was the stage of patience, wherein the Muslims were prohibited from fighting the disbelievers (i.e. fighting was *Harām*).

Allāh ﷻ says in *Sūrah an-Nisā'* (4:77):

﴿أَلَمْ تَرَ إِلَى الَّذِينَ قِيلَ لَهُمْ كُفُّوا أَيْدِيَكُمْ وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ
فَلَمَّا كُنِبَ عَلَيْهِمُ الْقِتَالُ إِذَا فَرِيقٌ مِنْهُمْ يَخْشَوْنَ النَّاسَ كَخَشْيَةِ اللَّهِ أَوْ
أَشَدَّ خَشْيَةً﴾

Have you not seen those who were told, “Restrain your hands [from fighting] and establish prayer and give zakāh?” But then when fighting was ordained for them, at once a party of them feared men as they fear Allāh or with [even] greater fear.

In *Sunan an-Nasā'i: The Book of Jihād* (3086), Ibn ‘Abbās رَضِيَ اللَّهُ عَنْهُ said:

أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ، وَأَصْحَابًا لَهُ أَتَوْا النَّبِيَّ ﷺ بِمَكَّةَ فَقَالُوا:
يَا رَسُولَ اللَّهِ، إِنَّا كُنَّا فِي عِزٍّ وَنَحْنُ مُشْرِكُونَ، فَلَمَّا آمَنَّا صِرْنَا أَذِلَّةً،
فَقَالَ: إِنِّي أُمِرْتُ بِالْعَفْوِ، فَلَا تُقَاتِلُوا. فَلَمَّا حَوَّلَنَا اللَّهُ إِلَى الْمَدِينَةِ، أَمَرْنَا
بِالْقِتَالِ، فَكَفُّوا، فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: ﴿أَلَمْ تَرَ إِلَى الَّذِينَ قِيلَ لَهُمْ كُفُّوا
أَيْدِيَكُمْ وَأَقِيمُوا الصَّلَاةَ﴾

“ ‘Abd ar-Rahmān ibn ‘Awf and some of the companions came to the Prophet ﷺ and said, “O Messenger of Allāh! We were respected when we were idolaters, and when we believed we were humiliated.” He said, “*I have been commanded to pardon, so do not fight.*” Then, when Allāh caused us to move to Madīnah, He commanded us to fight, but they refrained. Then Allāh, the Mighty and Sublime, revealed, ***Have you not seen those who were told, “Restrain your hands [from fighting] and establish prayer...***”⁵⁰

Abū Bakr al-Jaṣṣāṣ رَحِمَهُ اللَّهُ says in *Aḥkām al-Qur’ān*, “The scholars of the *Ummah* are in agreement that fighting was not allowed before the *Hijrah* (migration).”

Shaykh ibn Taymiyyah رَحِمَهُ اللَّهُ said, “The Prophet ﷺ was first ordered to wage *Jihād* against the disbelievers with his tongue and not with hand. Therefore, he called them (to Islām) and argued with them with that which was best, and He used to wage his mighty *Jihād* against them using the Qur’ān. Allah the Exalted says about it in *Sūrah al-Furqān*, which was a Makkan *Sūrah* (25:52):

﴿فَلَا تُطِيعُ الْكُفْرِينَ وَجَاهِدْهُمْ بِهِ جِهَادًا كَبِيرًا﴾

⁵⁰ Al-Albānī graded it *Ṣaḥīḥ*. Also in *al-Bayhaqī* (3/264), and in al-Ḥākim’s *al-Mustadrak* (2/76), who said that the *Ḥadīth* conforms to the conditions (for authenticity) of al-Bukhārī and Muslim

So do not obey the disbelievers, and strive against them with it [i.e., the Qur'ān] a great striving.”⁵¹

المرحلة الثانية: إذن

THE SECOND:

THE STAGE OF PERMISSION

Once the Prophet ﷺ had embarked upon his blessed *hijrah* to Madīnah, leaving Makkah and the polytheists behind him, Allāh ﷻ permitted him to fight without making it obligatory upon the Muslims. He ﷻ revealed,

﴿أُذِنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلِمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ﴾⁵²

*Permission [to fight] has been given to those who are being fought, because they were wronged. And indeed, Allāh is competent to give them victory.*⁵²

In *Sunan an-Nasā'ī: The Book of Jihād* (3085), ibn ‘Abbās (رضي الله عنه) narrates:

لَمَّا أُخْرِجَ النَّبِيُّ ﷺ مِنْ مَكَّةَ قَالَ أَبُو بَكْرٍ: أَخْرَجُوا نَبِيَّهُمْ، إِنَّا لِلَّهِ، وَإِنَّا إِلَيْهِ رَاجِعُونَ، لِيَهْلِكُنَّ، فَتَزَلَّتْ: ﴿أُذِنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلِمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ﴾ [الحج: 39] فَعَرَفْتُ أَنَّهُ سَيَكُونُ قِتَالٌ قَالَ ابْنُ عَبَّاسٍ: فَهِيَ أَوَّلُ آيَةٍ نَزَلَتْ فِي الْقِتَالِ

⁵¹ *Al-Jawāb as-Ṣaḥīḥ* (1/237)

⁵² *Sūrah al-Ḥajj* (22):39

“When the Prophet was expelled from Makkah, Abū Bakr said to him, ‘They have driven out their Prophet, verily to Allāh we belong and to Him we return. They are surely doomed.’ Then it was revealed, ***‘Permission [to fight] has been given to those who are being fought, because they were wronged. And indeed, Allāh is competent to give them victory.’*** Then I knew there would be fighting.” Ibn ‘Abbās said, “This is the first verse that was revealed concerning fighting.”⁵³

Al-Imām ibn al-‘Arabī al-Mālikī رَحِمَهُ اللهُ said in (his) *Aḥkāṁ al-Qur’ān* (3/301), “Our scholars رَحِمَهُمُ اللهُ have said that the before the pledge of al-‘Aqabah the Prophet ﷺ was not permitted to fight, neither was the blood of the disbelievers permitted for him. Rather, he was ordered to call them to Allāh, be patient upon their harms, and to turn away from the ignorant ones. This (stage) lasted for a period of ten years, and through this, Allāh established the *Hujjah* (proof) upon the polytheists, and fulfilled His promise, as He described:

﴿وَمَا كُنَّا مُعَذِّبِينَ حَتَّى نَبْعَثَ رَسُولًا﴾

And never would We punish until We sent a messenger.⁵⁴

However, they persisted in their (disbelief and) transgression...”

⁵³ Al-Albānī declared its *Isnād Ṣaḥīḥ*

⁵⁴ *Sūrah al-Isrā* (17):15

المرحلة الثالثة: الأمر بالقتال لمن قاتلهم

THE THIRD:

THE STAGE OF DEFENSIVE JIHAD

In this stage, Allāh ﷻ ordered the (i.e. made it *Wājib* upon the) believers with the noble verse in *Sūrah al-Baqarah* (2:190), to fight those who fought them, but to refrain from those who did not:

﴿وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ﴾^{١٩٠}

Fight in the way of Allāh those who fight you but do not transgress. Indeed, Allāh does not like transgressors.⁵⁵

This stage spanned the period between the battles of Badr (*al-Kubrā*) and the Trench in the fifth year *Hijrī*, after which the Messenger ﷺ would utter his prophetic words:

⁵⁵ Regarding Allāh's statement, ***but do not transgress***, ibn Kathīr, in his *Tafsīr* (1/528) says, "This verse means, 'Fight for the sake of Allāh and do not be transgressors,' such as, by committing prohibitions. Al-Ḥasan al-Baṣrī stated that transgression (indicated by the verse), 'includes mutilating the dead, theft (from the captured goods), killing women, children and old people who do not participate in warfare, killing priests and residents of houses of worship, burning down trees and killing animals without real benefit.' This is also the opinion of ibn 'Abbās, 'Umar bin 'Abdul-'Azīz, Muqātil bin Ḥayyān and others. Muslim recorded in his *Ṣaḥīḥ* that Buraydah رضي الله عنه narrated that Allāh's Messenger ﷺ said,

'Fight for the sake of Allāh and fight those who disbelieve in Allāh. Fight, but do not steal (from the captured goods), commit treachery, mutilate (the dead), or kill a child, or those who reside in houses of worship.'..."

الآن نَغْزُوهُمْ وَلَا يَغْزُونَنَا، نَحْنُ نَسِيرُ إِلَيْهِمْ

“From now on, we will attack them and they will not attack us, (rather) we will go to them.”⁵⁶

المرحلة الرابعة: الأمر بالقتال جميع الكفار

THE FOURTH: THE STAGE OF OFFENSIVE JIHĀD

In this fourth and final stage, Allāh ﷻ ordered (i.e. made it *Wājib* upon) the believers to go on the offense against all of the disbelievers, at all times and in all places, until they either embrace Islām, or submit and pay the *Jizyah* in a state of humiliation.

Evidence for this stage is found in the following verses:

﴿وَقَاتِلُوا الْمُشْرِكِينَ كَافَّةً كَمَا يُقَاتِلُونَكُمْ كَافَّةً
وَأَعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ﴾⁵⁷

*And fight against the disbelievers collectively as they fight against you collectively.*⁵⁷

﴿فَإِذَا أَسْلَخَ الْأَشْهُرُ الْحُرُمَ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ
وَخَذُوهُمْ وَأَحْصُرُوهُمْ وَأَقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا
الصَّلَاةَ وَآتَوْا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ إِنَّ اللَّهَ عَفُورٌ رَحِيمٌ﴾

⁵⁶ Ṣaḥīḥ al-Bukhārī: The Book of Expeditions (4110)

⁵⁷ Sūrah at-Tawbah (9):36

And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. ⁵⁸

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾ (٢٩)

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islām] from those who were given the Scripture - [fight] until they give the Jizyah willingly while they are humiliated. ⁵⁹

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ فَإِنَّ أَمْتَهُمْ فَإِنَّ اللَّهَ بِمَا يَعْمَلُونَ بَصِيرٌ﴾ (٣٩)

And fight them until there is no fitnah and [until] the religion [i.e., worship], all of it, is for Allāh. ⁶⁰

While from the *Sunnah*, the Prophet ﷺ said:

⁵⁸ Sūrah at-Tawbah (9):5

⁵⁹ Sūrah at-Tawbah (9):29

⁶⁰ Sūrah al-Anfāl (8):39

The vast majority of the Qur'ānic commentators say that the word *fitnah* in the verse, relates to *Shirk* and *Kufr* (polytheism and disbelief)

أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنَّ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا
رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ، عَصَمُوا
مِنِّي دِمَاءَهُمْ، وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا، وَحِسَابُهُمْ عَلَى اللَّهِ

*“I have been ordered to fight against the people until they testify that there is no deity worthy of worship except Allāh and that Muḥammad is the Messenger of Allāh, establish the prayer and give the zakāh. Then, if they do that, their blood and wealth will be protected from me – except in accordance with the right of Islām. And their reckoning will be with Allāh, the Exalted.”*⁶¹

In *Tafsīr Shaykh al-Islām ibn Taymiyyah* رَحِمَهُ اللَّهُ (3/299), ibn Taymiyyah says, “Zayd ibn Aslam رَضِيَ اللَّهُ عَنْهُ said, ‘...before Badr and before *Barā’ah* (i.e. *Sūrah at-Tawbah*) the Prophet ﷺ was ordered with patience upon their harms and to pardon them. However after Badr and before *Barā’ah*, he used to fight those who harmed him and leave those who were peaceful towards him, like how he dealt with ibn Ashraf⁶² and other than him from those that used to harm him.

Badr was the beginning of honour for the religion, and the conquest of Makkah was its completion. Before Badr he ﷺ would hear open insults (from his enemies) but was commanded with patience. After Badr, the hypocrites and others than them would abuse him in secret, (but) he was commanded with

⁶¹ *Ṣaḥīḥ al-Bukhārī: the Book of Faith* (25), *Ṣaḥīḥ Muslim: the Book of Faith* (22), *Jāmi’ at-Tirmidhī: the Book of Faith* (2608), *Sunan an-Nasā’ī: the Book of Jihād* (3090), *Sunan Abī Dāwūd: the Book of Jihād* (2642), *Sunan Ibn Mājah: the Book of the Sunnah* (75), *Musnad Aḥmad*, *al-Bayhaqī*, *Ibn Hibbān*, *al-Darqūṭnī*, and *Muwaṭṭa’ Imām Mālik*.

⁶² K’ab ibn al-Ashraf was a wealthy Jew who would incite the disbelievers against the Muslims and write poetry satirising the Muslims. The Prophet ﷺ dispatched a special operations unit head by Muḥammad ibn Maslamah رَضِيَ اللَّهُ عَنْهُ to assassinate him. Refer to the biographical accounts of the Prophet’s life ﷺ, such as aṣ-Ṣallābī’s *The Noble Life of the Prophet* ﷺ (pp.1073-1087) for more details

patience. During Tabūk he ﷺ was however, ordered to deal with the disbelievers and hypocrites harshly. (As a result) after this no disbeliever or hypocrite would be able to speak against him ﷺ in public, or in private gatherings, as they knew full well that if they spoke (ill of him ﷺ) they would be killed...”

Imām ibn Qayyim رَحِمَهُ اللَّهُ says in *Zād al-Ma'ād* (2/34), “The first thing which His Lord, Most Blessed, Most High revealed to him was to recite in the Name of his Lord, Who created him, and that was the start of his Prophethood. Then it was revealed to him:

﴿يَا أَيُّهَا الْمَدِينُ ۖ قُمْ فَأَنْذِرْ ۚ﴾

O you who covers himself [with a garment], Arise and warn⁶³

So He announced (his Prophethood) to him by the former verses and sent him forth as a Messenger by the latter verses. Then He commanded him to warn his close kin and he warned his people, then he warned those around them from amongst the Arabs, then he warned all of the Arabs without exception, then he warned all of mankind. He remained for thirteen years warning the people, without fighting and he was commanded to patiently persevere. Then it was permitted for him to migrate to al-Madīnah, and then to fight. After that, he was commanded to fight those who fought him. Then Allāh commanded him to make war on the polytheists until every kind of worship was for Allāh Alone.”⁶⁴

This fourth and final stage of *Jihād* is what the Prophet ﷺ departed and left his *Ummah* upon until the Day of Judgement, for as Allāh said when He revealed His noble verses during the Farewell Pilgrimage:

⁶³ *Sūrah al-Muddathir* (74):1-2

⁶⁴ Also in *Provisions for the Hereafter (Abridged)* (p.340)

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتِمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا﴾

This day I have perfected for you your religion and completed My favour upon you and have approved for you Islam as religion.⁶⁵

Nevertheless, *Shaykh al-Islām* ibn Taymiyyah رحمته الله says in *aṣ-Ṣārim al-Maslūl* (p.221), “Whoever from the believers is in a land in which he is oppressed (and unable), or in a specific period of weakness. Then he can act according to the verse of patience and overlooking concerning those who harm Allāh and His Messenger from those given the Scripture (i.e. the Jews and the Christians) and the polytheists. However, as for those who possess strength, then they are permitted only to act according to the verse of fighting the leaders of disbelief who defame the religion [9:12], and the verse of fighting ***those who were given the Scripture until they give the Jizyah willingly while they are humiliated*** [9:29].”

Despite the Shaykh mentioning the oppressed that are physically unable to defend themselves, it should be borne in mind that at such times preparation (for fighting) and/or *Hijrah* remains an obligation upon the weak and oppressed believers. As such, Allāh orders that they remove the yolk of disgrace of from around their necks; in order to be able to live according to the honour and dignity that Islām granted to the believers.

Allāh ﷻ said in *Sūrah al-Ankabūt* (29:56):

﴿يَعِبَادِيَ الَّذِينَ آمَنُوا إِنَّ أَرْضِيَّ وَسِعَتْ فِائِسِي فَأَعْبُدُونِ﴾

O My servants who have believed, indeed My earth is spacious, so worship only Me.

⁶⁵ *Sūrah al-Mā'idah* (5):3

He ﷺ says in *Sūrah an-Nahl* (16:110):

﴿ثُمَّ إِنَّ رَبَّكَ لِلَّذِينَ هَاجَرُوا مِنْ بَعْدِ مَا فُتِنُوا ثُمَّ جَاهَدُوا وَصَبَرُوا إِنَّ رَبَّكَ مِنْ بَعْدِهَا غَفُورٌ رَحِيمٌ﴾ (١١٠)

Then, indeed your Lord, to those who emigrated after they had been compelled [to renounce their religion] and thereafter fought [for the cause of Allāh] and were patient - indeed, your Lord, after that, is Forgiving and Merciful

And in *Sūrah an-Nisā'* (4:97-99):

﴿إِنَّ الَّذِينَ تَوَفَّاهُمُ الْمَلَائِكَةُ ظَالِمِي أَنْفُسِهِمْ قَالُوا فِيمَ كُنْتُمْ قَالُوا كُنَّا مُسْتَضْعَفِينَ فِي الْأَرْضِ قَالُوا أَلَمْ تَكُنْ أَرْضُ اللَّهِ وَسِعَةً فَتُهَاجِرُوا فِيهَا فَأُولَئِكَ مَأْوَاهُمْ جَهَنَّمُ وَسَاءَتْ مَصِيرًا﴾ (٩٧) *إِلَّا الْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ لَا يَسْتَطِيعُونَ حِيلَةً وَلَا يَهْتَدُونَ سَبِيلًا* (٩٨) *فَأُولَئِكَ عَسَى اللَّهُ أَنْ يَعْفُو عَنْهُمْ وَكَانَ اللَّهُ عَفُوءًا غَفُورًا* (٩٩)

Indeed, those whom the angels take [in death] while wronging themselves - [the angels] will say, "In what [condition] were you?" They will say, "We were oppressed in the land." They [the angels] will say, "Was not the earth of Allāh spacious [enough] for you to emigrate therein?" For those, their refuge is Hell - and evil it is as a destination.

Except for the oppressed among men, women, and children who cannot devise a plan nor are they directed to a way - For those it is expected that Allāh will pardon them, and Allāh is ever Pardoning and Forgiving.

It is also worth remembering that the one who rules whether a particular individual, or group, are truly in a state of weakness, and are therefore temporarily excused from waging *Jihād* with their selves (i.e. fighting), must be one conforming to the description of the scholars ibn Taymiyyah رحمہ اللہ mentioned previously.⁶⁶

In addition, according to scholars such as ibn Taymiyyah, although fighting was prohibited until after the *Hijrah*, *Jihād bi'l-Lisān* (*Jihād* with the tongue) has always been *Wājib*. Therefore, the one that reflects and ponders over those Makkan verses in which Allāh ﷻ commanded the Prophet ﷺ to address the disbelievers in the harshest of terms, will see that there is no excuse for the humiliation the *Ummah* has voluntarily subjected itself to at the hands of the disbelievers, and Allāh ﷻ knows best.

He رحمہ اللہ says in *Majmū' al-Fatāwā* (28/259), “In those instances where (the obligation for) it (i.e. the *Jihād*) drops due to inability, the preparation is *Wājib* by making ready the power from steeds of war, because whatever is required to perform a *Wājib*, also becomes *Wājib*.”⁶⁷

Shaykh ibn رحمہ اللہ Bāzz says, “A number of the people of knowledge hold that the second phase, which was fighting those who fought the Muslims and withholding from those who did not fight them, was abrogated as it was during a stage of weakness for the Muslims. However, when Allāh strengthened them and increased them numerically and materially, He ordered them to fight both those who fought them, as well as those who

⁶⁶ He said, “It is *Wājib* (obligatory) regarding matters of *Jihād* to take (rulings) from those possessing both sound religion and an understanding of the reality on the ground. Not from those who possess only a theoretical and superficial understanding of the religion, or from those who do not know or understand the reality on the ground.”

⁶⁷ Also in *Fundamental Concepts Regarding al-Jihād* (p.101)

did not, until the religion in its entirety was for Allāh Alone, or (until) they paid the *Jizyah* if they were eligible to.

While others hold that the second phase was not abrogated, rather it remains applicable, to be acted upon in situations of necessity. Therefore, if the Muslims are strong and able to initiate fighting and *Jihād* in the cause of Allāh against their enemies, then for them is to act according to the verse(s) of (*Sūrah*) *at-Tawbah* and those with a similar meaning. But, if they are not able to do that, then upon them is to prepare for, and to fight whoever fights them, (but) refrain from whoever refrains from them, in accordance with the verse of (*Sūrah*) *an-Nisā'*,⁶⁸ and those similar to it. This opinion seems to be the most correct, and preferential to the opinion of its abrogation, and is the opinion of *Shaykh al-Islām* ibn Taymiyyah رَحِمَهُ اللهُ. ”⁶⁹

⁶⁸ The Shaykh is referring - and Allāh knows best - to the verse (4:90), as he previously mentioned it while speaking about what he termed the second stage of *Jihād* (i.e. the stage of defensive *Jihād*, which we have termed the third stage). Allāh says therein:

﴿فَإِنْ أَعَانُواكُمْ فَغَارُوا عَلَيْهِمْ وَلَا أُولُواكُمْ فَتَقَاتِلُوا فِي سَبِيلِ اللَّهِ لِكُمْ عَلَيْهِمْ سَبِيلٌ ۖ﴾

So if they remove themselves from you and do not fight you and offer you peace, then Allāh has not made for you a cause [for fighting] against them.

⁶⁹ Ibn Bāzz, *Majmū' al-Fatāwā: Faḍl al-Jihād wa'l-Mujāhidīn*, (18/75)

CHAPTER SUMMARY

The four stages in the legislation of *Jihād* (fighting) are:

- 1) Prohibition (in Makkah)
- 2) Permission
- 3) The obligation to fight in self-defence
- 4) The obligation to initiate fighting against all disbelievers until *the religion [i.e., worship], all of it, is for Allāh*

CHAPTER 4

أقسام الجهاد

THE DIVISIONS OF JIHĀD

Jihād can be divided into two types:

- Defensive *Jihād*
- Offensive *Jihād*

جهاد الدفع

DEFENSIVE JIHĀD

Defensive *Jihād* is striving to defend against, and repel a transgressing enemy's attack, and it is the same (in its ruling) whether on the part of an individual or a group. Its primary aim is to prevent the enemy from usurping the Muslim's lands, even if only by a hand span. Likewise, it is to prevent him from transgressing against the Muslims, their religion, honour, and their wealth, even if the enemy does not physically seize any of the Muslim land. Such as happens today when the disbelievers

conduct airstrikes, fire cruise missiles, and employ their Special Forces units to infiltrate and kidnap the Muslims from their homes. In addition to this, they also hire local proxies to achieve their evil designs on the populations in the lands of the Muslims, coupled with, (and perhaps more dangerously) their systematic use of psychological terrorism aimed at stripping Islām from the Muslims residing in their lands (i.e. the lands of the disbelievers).

حكم جهاد الدفع

THE RULING REGARDING DEFENSIVE JIHĀD

This type of *Jihād* is an individual obligation (*Fard 'Ayn*) upon every responsible (*Mukallaf*)⁷⁰ and capable Muslim, even if they happen to be women. This applies whenever the enemy attacks, or is preparing to attack the Muslim lands, people, honour, or wealth. There is no difference whether the attacker happens to be a disbeliever, or a transgressing Muslim.

The (individual) obligation is initially imposed upon those present in the area under attack, and if they fail, for any reason, to successfully repel the assault, then the obligation spreads to those immediately neighbouring them. If this does not succeed, then the obligation keeps spreading, encompassing more and more lands (and their people) until the enemy is successfully

⁷⁰ *Taklīf* (تكليف) consists of two factors:

- 1) Maturity (البلوغ); and in Islām this is attained when the child reaches the age of puberty
- 2) Sanity (العقل); as such, the person is not insane or mentally impaired to the extent that they are unable to discern right from wrong.

Once a person possesses these two qualities, they are no longer considered to be a minor, and are henceforth deemed responsible for their actions and are required to fulfil all that Islām has made obligatory upon them, and likewise abstain from all that Islām prohibits

repelled, or the obligation encompasses the entire earth, as it has done today.

The people of knowledge are all agreed that none of the conditions associated with offensive *Jihād* apply to defensive *Jihād*, rather the only condition that affects its obligatory nature is ability, which will be discussed in a later chapter, by the permission of Allāh ﷻ.

Shaykh al-Islām ibn Taymiyyah رحمه الله states in *Fatāwā al-Kubrā* (5/538), “As for the defensive *Jihād*, then it is the most severe type of repelling the aggressor from the sanctities and the religion, and as such, is *Wājib* by consensus. There are no conditions restricting its obligation, and there is nothing more obligatory than repelling the aggressing enemy who corrupts both the religious and worldly (affairs). Rather, the repulsion is undertaken (each) according to his capability, and this has been stated by our companions from amongst the scholars, and by other than them...”

He also says (5/539), “If the enemy attacks the Muslim lands, then there is no doubt that repelling him is an obligation upon the closest, followed by the next closest to them (and so on)... Therefore, it becomes an obligation to march forth without the permission of the parents, or others than them, with Aḥmad citing evidence regarding the validity of this (position).”

Additionally, in *al-Furū'* (6/190) he says, “Defensive *Jihād* against the disbelievers is an obligation upon every individual, it being impermissible (for a Muslim) to flee from an enemy (not more than) twice his number. This is because *Jihād* (in such a situation) is not a matter of choice, but rather a necessity, with its obligation proven on the days of Uḥud and the Trench, and likewise when the Tatar marched on Damascus.”

Ibn Qayyim رَحِمَهُ اللهُ, in *al-Furūsiyyah* (pgs.121&122) says:

“And Defensive *Jihād* is severer than Offensive *Jihād*, as Defensive *Jihād* resembles the one repelling an assailant. (In such a situation) it becomes permissible for the oppressed to defend himself, as stated by Allāh (22:39):

﴿أُذِنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ﴾⁷¹

Permission [to fight] has been given to those who are being fought, because they were wronged.

Likewise, the Prophet ﷺ said:

مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دِمِهِ فَهُوَ شَهِيدٌ

‘Whoever is killed defending his wealth is a martyr, and whoever is killed defending himself is a martyr.’⁷¹

As such, while it is a concession (to the usual prohibition of killing another Muslim) causing it to be permissible to repel the one who assaults the wealth and the self. Additionally, whoever is killed doing this is indeed a martyr. Repelling the aggressor who assaults the religion is *Jihād*, and a means of nearness to Allāh ﷻ.

Hence, the defensive fighting is more encompassing, and a wider-reaching obligation, than the offensive. It is *Wājib* upon every individual to wage *Jihād* (defensively); the slave with, or without the permission of the master, the

⁷¹ *Ṣaḥīḥ al-Bukhārī: The Book of Oppressions* (2480), *Ṣaḥīḥ Muslim: The Book of Faith* (141), *Sunan an-Nasā’ī: The Book of Fighting [The Prohibition of Bloodshed]* (4095), *Sunan Abī Dāwūd: The Book of the Sunnah* (4772), *Sunan ibn Mājah: The Book of Blood Money* (2678), *Jāmi’ at-Tirmidhī: The Book of Blood Money* (1421)

child without the permission of the parents, the debtor without the permission of the lender, and as such is similar to the *Jihād* of the Muslims on the days of Uḥud and the Trench...

Although, as for offensive *Jihād* specifically, then only one of two individuals are inclined to it; the one possessing immense faith (in Allāh) that fights so that the word of Allāh is uppermost, and the religion in its entirety is for Allāh alone. And the one attracted because of (the prospects) of spoils and captives. On the other hand, Defensive *Jihād* encompasses everyone, and none turns away from it except the coward, considered blameworthy according to both, the *Sharī'ah* and the intellect..."

[End of ibn Qayyim quote]

جِهَادُ الطَّلَبِ

OFFENSIVE JIHĀD

Offensive *Jihād*, otherwise known as *Ghazū* (الغزو), is the Muslims, led by their *Imām*, venturing out of *Dār al-Islām* (at least) once a year to attack the disbelievers in their lands. The purpose being to expand the Islamic territory, spread the message and call to Islām, keep away the harm of the disbelievers, and clear the lands of *Shirk* and *Kufr*, thus raising the banner of

لَا إِلَهَ إِلَّا اللَّهُ

‘There is not deity worthy of worship except Allāh,’ above all else.

حكم جهاد الطلب

THE RULING REGARDING OFFENSIVE JIHĀD

The scholars from the four schools of thought have all agreed that Offensive *Jihād* is a collective obligation (*Farḍ Kifāyah*). As such, if a sufficient number rise to discharge the obligation then the obligation falls from the remainder of the people. However if no one, or an insufficient number rise to fulfil it, then all are sinful (except those who rose to discharge the obligation).

They arrived at the conclusion that offensive *Jihād* is not an individual obligation, due to the Allāh's statement in *Sūrah an-Nisā'* (4:95):

﴿لَا يَسْتَوِي الْقَاعِدُونَ مِنَ الْمُؤْمِنِينَ غَيْرُ أُولِي الضَّرَرِ وَالْمُجَاهِدُونَ فِي سَبِيلِ
اللَّهِ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فَضَّلَ اللَّهُ الْمُجَاهِدِينَ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ عَلَى
الْقَاعِدِينَ دَرَجَةً وَكُلًّا وَعَدَ اللَّهُ الْحُسْنَىٰ وَفَضَّلَ اللَّهُ الْمُجَاهِدِينَ عَلَى الْقَاعِدِينَ
أَجْرًا عَظِيمًا﴾

Not equal are those believers remaining [at home] - other than the disabled - and the Mujāhidīn, [who strive and fight] in the cause of Allāh with their wealth and their lives. Allāh has preferred the mujāhidīn through their wealth and their lives over those who remain [behind], by degrees. And to all [i.e., both] Allāh has promised the best [reward]. But Allāh has preferred the Mujāhidīn over those who remain [behind] with a great reward

And in *Sūrah at-Tawbah* (9:122):

﴿وَمَا كَانَ الْمُؤْمِنُونَ لِيَنفِرُوا كَافَّةً فَلَوْلَا نَفَرَ مِن كُلِّ فِرْقَةٍ مِّنْهُمْ طَائِفَةٌ لِّيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ﴾⁷²

And it is not for the believers to go forth [to battle] all at once. For there should separate from every division of them a group [remaining] to obtain understanding in the religion and warn [i.e., advise] their people when they return to them that they might be cautious.

Accordingly, if offensive *Jihād* were not a collective obligation, then Allāh ﷻ would not have promised those who go out and those who remain behind good, as it would have been *Harām* to remain behind if the *Jihād* was an individual obligation.

حكم من نهي عن جهاد الكفار

THE RULING OF THE ONE WHO (SEEKS TO) PREVENT THE BELIEVERS FROM JIHĀD AGAINST THE DISBELIEVERS

Ibn Ḥazm al-Andlūsī رَحِمَهُ اللَّهُ states that, “There is no sin after disbelief greater than the sin of the one who forbids others from *Jihād* against the disbelievers, and enjoins that the sanctities of the Muslims be handed over to them.”⁷²

⁷² *Al-Muḥallā* (5/352), (930)

CHAPTER SUMMARY

Jihād can be divided into two types:

- **Defensive *Jihād***, which is an individual obligation, and
- **Offensive *Jihād***, which is a collective obligation; where if a sufficient number of believers rise to discharge it, then the obligation falls from the rest of the people ⁷³

It should also be understood that the default ruling for *Jihād* is that it is a collective obligation, as from the battle of the Trench onwards; *Jihād* was always offensive in nature. This remained the case throughout the ages, until the Muslims turned away from their religion all but abandoning *Jihād*. As a result, Allāh covered the Muslims with a humiliation that remains present until today, when there is no longer any offensive *Jihād*. Rather the Muslims are attacked from every angle, and the individual obligation, which has become our default, to defend Islām and the weak and oppressed Muslims has engulfed the entire earth.

The Prophet ﷺ said regarding this state of affairs,

إِذَا تَبَايَعْتُمْ بِالْعِينَةِ، وَأَخَذْتُمْ أَذْنَابَ الْبَقَرِ، وَرَضِيتُمْ بِالزَّرْعِ، وَتَرَكْتُمُ
الْجِهَادَ، سَلَّطَ اللَّهُ عَلَيْكُمْ ذِلًّا، لَا يَنْزِعُهُ حَتَّى تُرْجِعُوا إِلَى دِينِكُمْ

“If you trade in ‘*Īnah* (i.e. a usurious transaction), and follow the tails of cows, and became content with agriculture, and

⁷³ For more information on the issues covered in this chapter, refer to Shaykh ‘Abdullāh ‘Azzām’s *Fatwā* رَحِمَهُ اللَّهُ, *In Defence of the Muslims Lands*

*abandon Jihād, Allāh will impose on you a humiliation that would not be taken away until you go back to your religion.”*⁷⁴

Additionally, Thawbān رضي الله عنه narrates in *Sunan Abī Dāwūd: The Book of al-Malāḥim* (4297) that the Messenger of Allāh ﷺ said:

يُوشِكُ الْأُمَمُ أَنْ تَدَاعَى عَلَيْكُمْ كَمَا تَدَاعَى الْأَكْلَةُ إِلَى قَصْعَتِهَا فَقَالَ قَائِلٌ: وَمِنْ قِلَّةٍ نَحْنُ يَوْمَئِذٍ؟ قَالَ: بَلْ أَنْتُمْ يَوْمَئِذٍ كَثِيرٌ، وَلَكِنَّكُمْ غُثَاءٌ كَغُثَاءِ السَّيْلِ، وَلَيَنْزِعَنَّ اللَّهُ مِنْ صُدُورِ عَدُوِّكُمْ الْمَهَابَةَ مِنْكُمْ، وَلَيَقْذِفَنَّ اللَّهُ فِي قُلُوبِكُمُ الْوَهْنَ. فَقَالَ قَائِلٌ: يَا رَسُولَ اللَّهِ، وَمَا الْوَهْنُ؟ قَالَ: حُبُّ الدُّنْيَا وَكَرَاهِيَةُ الْمَوْتِ

“The people will soon summon one another to attack you as people when eating invite others to share their dish.” Someone asked, “Will that be because of our small numbers at that time?” He replied, “No, you will be numerous at that time; but you will be scum and rubbish like that carried down by a torrent, and Allāh will take the fear of you from the breasts of your enemy and will put Wahn into your hearts.” Someone asked, “What is Wahn?” The Messenger of Allāh replied, “Love of the world and hatred of death.”

⁷⁴ *Sunan Abī Dāwūd: The Book of Wages* (3642) and *Musnad Aḥmad*. Al-Albānī declared it as *Ṣaḥīḥ*

CHAPTER 5

حكم الاستعداد الجهاد

THE RULING REGARDING PREPARATION FOR JIHĀD

Allāh ﷻ commands the believers in *Sūrah al-Anfāl* (8:60):

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ
بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَءَاخِرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ
يَعْلَمُهُمْ﴾

And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allāh and your enemy and others besides them whom you do not know [but] whom Allāh knows.

Ibn Kathīr رحمه الله, commenting on this noble verse says, “Allāh commands the Muslims to prepare for war against the disbelievers, as much as possible, according to affordability and availability. Allāh said, *And prepare against them whatever you are able*; whatever you can muster, *of power, including steeds of*

war. *Imām Aḥmad* recorded that ‘Uqbah bin ‘Āmir said that he heard the Messenger of Allāh ﷺ, while standing on the pulpit, **‘And prepare against them whatever you are able of power,**

أَلَا إِنَّ الْقُوَّةَ الرَّمِي، أَلَا إِنَّ الْقُوَّةَ الرَّمِي

Verily, Power is shooting! Power is shooting.”⁷⁵

From the above, it is evident that preparation for *Jihād* is obligatory upon the believers. In relation to this, Shaykh ‘Abd ar-Raḥmān as-Sa’dī رَحِمَهُ اللَّهُ comments in his *Tafsīr* (p.302):

“**And prepare** for your disbelieving enemies who are striving to ruin you and abolish your religion, **Whatever you are able of power.** Meaning; everything that you are capable of mustering from physical and intellectual strength, the various types of weaponry, and other than these from whatever you can utilise in your fight (against the disbelievers). Included in this is the manufacturing capabilities required to produce the various weapons and instruments of war, such as artillery, machine guns, rifles, aircraft, land and sea vehicles, trenches and fortifications, and other types of construction materials needed in the defence.”⁷⁶

Also (included is) mastering (the arts of) shooting, courageousness, and military stratagem. Along with political stratagem aimed at averting the evil of their

⁷⁵ *Tafsīr ibn Kathīr* (4/344). The *Ḥadīth* is also recoded in *Ṣaḥīḥ Muslim: The Book of Governance* (1917)

⁷⁶ The type of weapons the Shaykh is mentioning were the weapons of his era, therefore as weapons technology and battlefield tactics advance so should the level of the believers’ preparation. Ibn Taymiyyah says in *Majmū’ al-Fatāwā* (28/13), “And learning (the skills needed) to manufacture (weapons needed in *Jihād*) is from the righteous actions, for those who seek by it the countenance of Allāh.”

enemies, and that, which will result in the advancement of the Muslims. Regarding these things, the Prophet ﷺ said, ‘*Verily, power is in shooting.*’

Following on from these is the preparation of whatever vehicles are needed for combat, and as such Allāh said, ‘*and of steeds of war by which you may terrify the enemy of Allāh and your enemy.*’”⁷⁷

[End of as-Sa’dī quote]

Furthermore, it is clear that preparation serves both; the purpose of physically and psychologically equipping the Muslims to confront the enemies of Allāh in combat; and in striking terror into the hearts of these same enemies, ***and others besides them whom you do not know [but] whom Allāh knows.***

The scholars have also clarified that the rulings for preparation and for *Jihād* (fighting) mirror each other. This is because, “When a matter is an individual obligation, that means the matters that lead to it and the resources that are required are also individual obligations, because the ruling on a matter is the same for its preparation,” as stated by Shaykh Abū Qatādah al-Filistīnī in his *Fatwā* on contemporary military preparation.⁷⁸

Another angle from which the obligation of military preparation can be established, is from the principle of *Fiqh* originating from the words of the Prophet ﷺ:

لَا ضَرَرَ وَلَا ضِرَارَ

⁷⁷ *Taysīr al-Karīm ar-Raḥmān fī Kalām al-Manān*, aka. *Tafsīr as-Sa’dī*

⁷⁸ Available [here](#), and *What is the Ruling on Military Preparation in our Time?* available from [Mawahhid Media](#)

“There is neither harming, nor reciprocating of harm.”⁷⁹

Hence, since fighting itself is *Wājib*, its preparation, tactics and weapons training likewise are, due to the well-known fact that the one without sufficient training is not only a danger to himself, but also a danger to those around him. Countless are the incidents where *Mujāhidīn* have been seriously injured, or killed, because of their or someone else's carelessness stemming from a lack of adequate training. This is not to mention of the even greater harm caused by the *Jihādī* leader's deficiency in knowledge of military (and religious) principles and tactics; an all too unfortunate fact *Mujāhidīn*'s graveyards all over the world attest to - and ***indeed to Allāh do we belong, and to Him do we return.***

Yet another angle which may be used to establish this obligation, is according to the principle,

العلم قبل القول والعمل

‘Knowledge precedes speech and action’

Consequently, it is only with adequate preparation, that the believer acquires the knowledge he requires to wage *Jihād* as it ought to be waged, and is able to stay within the boundaries of the permissible and not stray into the *Harām*.

As previously alluded to by as-Sa'dī رَحْمَةُ اللَّهِ فِيهِ in his *Tafsīr*, military preparation for *Jihād* is just one aspects falling within the overall obligation of preparation. As such, there are numerous branches, each requiring their own specific preparation. The foremost

⁷⁹ *Sunan ibn Mājah: The Book on Rulings* (2340), *al-Muwaṭṭa': The Book of Judgements* (1435), *ad-Dārquṭnī*, and *al-Bayhaqī*. Refer to ibn Rajab al-Ḥanbalī's *al-Qā'idah adh-Dhahabiyyah fī'l-Mu'āmalāt al-Islāmiyyah lā Ḍarar wa lā Ḍirār*, for more details on the *Ḥadīth* and its corresponding principle of *Fiqh*

being knowledge of the religion of Allāh ﷻ, and specifically that which relates to *Jihād*. Also included in this, is the worldly knowledge which the ‘*Ibādah* of *Jihād* relies upon.

In addition, when the *Jihād* is an individual obligation, Allāh has used the act of preparation as an indicator of the believer’s truthfulness, while its absence is a sign of hypocrisy. He says in *Sūrah at-Tawbah* (9:46):

﴿وَلَوْ أَرَادُوا الْخُرُوجَ لَأَعَدُّوا لَهُ عُدَّةً وَلَكِنْ كَرِهَ اللَّهُ انْبِعَاثَهُمْ فَثَبَّطَهُمْ وَقِيلَ اقْعُدُوا مَعَ الْقَاعِدِينَ ﴿٤٦﴾﴾

And if they had intended to go forth, they would have prepared for it [some] preparation. But Allāh disliked their being sent, so He kept them back, and they were told, “Remain [behind] with those who remain.”

Likewise, in *Ṣaḥīḥ Muslim: The Book of Governance* (1910), the Messenger of Allāh ﷺ said:

مَنْ مَاتَ وَلَمْ يَغْزُ وَلَمْ يُحَدِّثْ بِهِ نَفْسَهُ مَاتَ عَلَى شُعْبَةٍ مِنْ نِفَاقٍ

“Whoever dies without fighting, or having made the firm intention to do so, has died upon a branch of hypocrisy.”⁸⁰

As-Sindī رحمه الله said in his commentary of *Sunan an-Nasā’ī* (6/8), “...having made the firm intention to do so, means without having said to himself, ‘I wish I could go out for *Jihād*.’ Alternatively, it could mean that he did not intend to go out for *Jihād*, and the sign of intending to go out for *Jihād* is preparing

⁸⁰ Also in *Sunan Abī Dāwūd: The Book of Jihād* (2502), and *Sunan an-Nasā’ī: The Book of Jihād* (3097)

equipment. Allāh says, ***And if they had intended to go forth, they would have prepared for it [some] preparation.***”⁸¹

Al-Qurṭubī رَحْمَةُ اللَّهِ says in his *Tafsīr* (4/490), “As such, their abandonment of preparation is evidence (that they did not intend to go forth).” While ash-Shawkānī رَحْمَةُ اللَّهِ comments in *Fath al-Qadīr* (2/418), “Preparation is **whatever** the *Mujāhid* requires (in order to perform *Jihād*), from provisions, transportation, and weapons.”

الإستعداد: الفريضة المستمرة

PREPARATION AS ON ON-GOING OBLIGATION

After having established the obligatory nature of preparation, it is important to note, that unlike *Jihād* itself, which may alternate between an individual obligation and a collective one, preparation remains an on-going obligation. Therefore, even if there is a cessation of hostilities, it is not permissible for the *Mujāhid*, unlike the disbelieving soldier, to allow his combat proficiency, or any other skills required for *Jihād* to diminish.

Scholars, such as ibn an-Nuḥḥās رَحْمَةُ اللَّهِ, mentioned this principle in their works. He entitled a sub-chapter in his book *Mashāri' al-Ashwāq* (pp.490-492):

⁸² (في ما جاء في الوعيد الشديد لمن تعلم الرمي ثم تركه)

⁸¹ *Ḥāshiyah as-Sindī 'alā Sunan an-Nasā'ī*

⁸² Also in *Mashari al-Ashwaq ila Masari al-Ushaaq* (English abridgement), p.317

Regarding the Severe Threat upon the One Who Learns Shooting and then Abandons it

In which he narrates a *Hadīth* reported by Muslim رَحِمَهُ اللَّهُ in his *Ṣaḥīḥ: The Book on Governance* (1919):

أَنَّ فُقَيْمًا اللَّخْمِيَّ، قَالَ لِعُقْبَةَ بْنِ عَامِرٍ: تَخْتَلِفُ بَيْنَ هَذَيْنِ الْغَرَضَيْنِ وَأَنْتَ كَبِيرٌ يَشُقُّ عَلَيْكَ، قَالَ عُقْبَةُ: لَوْلَا كَلَامُ سَمِيعَتِهِ مِنْ رَسُولِ اللَّهِ ﷺ لَمْ أُعَانِيهِ، قَالَ الْحَارِثُ: فَقُلْتُ لِابْنِ شِمَاسَةَ: وَمَا ذَاكَ؟ قَالَ: إِنَّهُ قَالَ: «مَنْ عَلِمَ الرَّمْيَ، ثُمَّ تَرَكَهُ، فَلَيْسَ مِنَّا» أَوْ «قَدْ عَصَى»

Faqīm al-Lakhmī told ‘Uqbah bin ‘Āmir, “You are running between these two targets and you are at this old age?” ‘Uqbah replied, “If it wasn’t for some words I heard from the Messenger of Allāh ﷺ I wouldn’t have gone through this.” The narrator asked what those words were, he said, “Whoever learns shooting and then abandons it is not one of us” – or he said, “has committed a sin.”

Ibn an-Nuḥḥās comments (p.491), “Some of the scholars are of the opinion that learning shooting and then abandoning it is one of the major sins, based on the principle that whenever the Messenger of Allah ﷺ said:

مَنْ فَعَلَهُ فَلَيْسَ مِنَّا، أَوْ فَقَدْ عَصَا، أَوْ عَصَانِي

‘Whoever does such-and-such is not from us,’ or ‘has committed a sin,’ or ‘has disobeyed me,’ it is referring to a major sin.”

Additionally, an-Nawawī رَحِمَهُ اللَّهُ says in *al-Minhāj* (4/1997), “It is severely detested to abandon shooting.”

In another *Hadīth*, ‘Uqbah رَضِيَ اللَّهُ عَنْهُ narrates that he heard the Messenger of Allāh ﷺ say:

سَتُفْتَحُ عَلَيْكُمْ أَرْضُونَ، وَيَكْفِيكُمْ اللَّهُ، فَلَا يَعْجِزُ أَحَدُكُمْ أَنْ يُلْهُوَ
بِأَسْهُمِهِ

“You will conquer many lands and you will be safe and secure. If that happens don't fail to play with your arrows!”⁸³

⁸³ *Ṣaḥīḥ Muslim: The Book of Governance* (1918)

CHAPTER SUMMARY

Preparation for *Jihād* carries the same ruling as *Jihād* itself, which today is an individual obligation. Evidence for the obligation of preparation is apparent from a number of perspectives, such as:

- 1) The noble verse (8:60):

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ﴾

And prepare against them whatever you are able

- 2) The principles, ‘The ruling on a matter is the same as its preparation,’
- 3) “*There is neither harming, nor reciprocating harm,*” and
- 4) ‘Knowledge proceeds speech and action’

Failure to do so is an act of hypocrisy, indicated by the verse,

﴿وَلَوْ أَرَادُوا الْخُرُوجَ لَأَعَدُّوا لَهُ عُدَّةً﴾

And if they had intended to go forth, they would have prepared for it [some] preparation.

CHAPTER 6

متى يصير الجهاد فرض العين؟

WHEN DOES JIHĀD BECOME AN INDIVIDUAL OBLIGATION?

The majority of scholars have agreed that *Jihād* ceases being a collective obligation and becomes an individual obligation in the following instances:

- 1) If the enemy attacks, or is preparing to attack any part of the Muslims' territory. In such instances, it becomes an individual obligation upon the Muslims in the area under threat to repel the enemy. If the Muslims in the area under attack are unable, or unwilling to repel the enemy, then the obligation expands in a circular fashion encompassing those nearest to them. If they are still unable, this process repeats itself until the enemy's aggression has been checked, and any land previously lost has been restored. Alternatively, the obligation encompasses the entire earth, and remains so until the enemy has been completely repelled.

Evidence for this is found in the statement of Allāh ﷻ in *Sūrah al-Baqarah* (2:190&191):

﴿وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ
اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ ﴿١٩٠﴾ وَأَقْتُلُوهُمْ حَيْثُ ثَقِفْتُمُوهُمْ وَأَخْرِجُوهُمْ مِّنْ
حَيْثُ أَخْرَجَكُمُ وَالْفِتْنَةُ أَشَدُّ مِنَ الْقَتْلِ﴾

Fight in the way of Allāh those who fight you but do not transgress. Indeed, Allāh does not like transgressors. And kill them wherever you overtake them and expel them from wherever they have expelled you, and fitnah is worse than killing.

Regarding this, no distinction is made between East and West; rather the Muslim lands in their entirety are the property, and responsibility of every Muslim, regardless of race, ethnicity, or nationality.

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللَّهُ says in *Fatāwā al-Kubrā* (5/538), “It is *Wājib* according to the consensus [...] and there is nothing more obligatory after believing (in Allāh) than repelling (the enemy) [...] each person according to his capability.

He also says, in *Majmū’ al-Fatāwā* (28/358&359), “If the enemy intends to attack the Muslims then indeed repelling them becomes *Wājib* upon all of those in the area under threat, while for other than them it is obligatory (collectively) to assist those under threat (or attack). As Allāh says [8:72]:

﴿وَإِنِ اسْتَنْصَرُوكُمْ فِي الدِّينِ فَعَلَيْكُمُ النَّصْرُ﴾

And if they seek help of you for the religion, then you must help

In addition, the Prophet ﷺ ordered the helping of the Muslim, it being the same whether the person (that it obliged to help) is an

enlisted *Mujāhid* (i.e. he is a soldier in the Muslim army) or not. This remains an obligation, each according to his physical and financial capacity; whether (he is) rich or poor, possessing transport or on foot, as was the situation with the Muslims when the enemy attacked them during the Battle of the Trench. (At that time) Allāh did not permit anyone to remain behind, as people are permitted when the *Jihād* is offensive, and are thus classified as one who remains (قاعد) and the one who goes out (خارج). Rather, (during the Battle of the Trench) everyone who asked the Prophet ﷺ for permission to remain behind was regarded as blameworthy.

﴿وَيَسْتَعِذُّنَ فَرِيقٌ مِّنْهُمْ النَّبِيَّ يَقُولُونَ إِنَّ بُيُوتَنَا عَوْرَةٌ وَمَا هِيَ بِعَوْرَةٍ إِن يُرِيدُونَ إِلَّا فِرَارًا﴾⁸⁴

And a party of them asked permission of the Prophet, saying, "Indeed, our houses are exposed [i.e., unprotected]," while they were not exposed. They did not intend except to flee."⁸⁴

Imām ibn ‘Abd al-Barr رحمه الله says in *al-Kāfī: Kitāb al-Jihād* (p.462), “*Jihād* can be divided into two divisions: (the first) is an individual obligation, when the enemy attacks *Dār al-Islām*, on every free and mature Muslim capable of defending, fighting, and handling a weapon. In this situation, it becomes *Wājib* upon all the capable people of the region to march forth, light or heavy, young or old, whether they be fighters, or are just present to increase the numbers of the Muslims, with none being permitted to remain behind...”⁸⁵

⁸⁴ *Sūrah al-Aḥzāb* (33):13

Also in *as-Siyāsah ash-Shar’iyyah* (p.367)

⁸⁵ The eminent scholar of the Successors, Sa’īd ibn al-Muṣayyib demonstrates this understanding, in a narration reported by ibn an-Nuḥḥās in *Mashāri’ al-Ashwāq* (p.95): “Az-Zuhrī states that Ibn al-Muṣayyib joined the army when he had already lost one of his eyes due to old age. He was told you are ill, he said, ‘May Allāh forgive me!’ Allāh says the **light** and the **heavy**. If I am

- 2) If the *Imām* orders a general march, specifying an individual or group, then it becomes *Wājib* upon those he has called upon to march forth, even if the *Jihād* is offensive, and not originally *Wājib* upon them. In this case, it is not permissible for any of them to remain behind, unless they have a valid *Shar'ī* exemption.

Evidence for this category is found in the noble verses in *Sūrah at-Tawbah* (9:38&39), in which Allāh ﷻ says:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا مَا لَكُمْ إِذَا قِيلَ لَكُمْ أَنْفِرُوا فِي
سَبِيلِ اللَّهِ أَتَأْخُذْتُمْ إِلَى الْأَرْضِ أَرْضَيْتُمْ بِالْحَيَاةِ الدُّنْيَا
مِنَ الْآخِرَةِ فَمَا مَتَّعَ الْحَيَاةَ الدُّنْيَا فِي الْآخِرَةِ إِلَّا قَلِيلٌ
إِلَّا تَنْفِرُوا يُعَذِّبْكُمْ عَذَابًا أَلِيمًا وَيَسْتَبْدِلْ قَوْمًا
غَيْرَكُمْ وَلَا تَضُرُّوهُ شَيْئًا وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ ﴿٣٩﴾

O you who have believed, what is [the matter] with you that, when you are told to go forth in the cause of Allāh, you adhere heavily to the earth? Are you satisfied with the life of this world rather than the Hereafter? But what is the enjoyment of worldly life compared to the Hereafter except a [very] little.

If you do not go forth, He will punish you with a painful punishment and will replace you with another people, and you will not harm Him at all. And Allāh is over all things competent.

incapable of fighting, at least I will increase the number of the army and would guard your luggage” (*Mashari al-Ashwaq ila Masari al-Ushaaq [English translation]*, p.272)

These verses are also indicative that, for the one who refrains from *Jihād*, there is the threat of a painful punishment, and of Allāh replacing those who do not go forth with another people.

A people that Allāh ﷻ describes in *Sūrah Muḥammad* (47:38), saying:

﴿هَآأَنُتُمْ هَؤُلَآءِ تُدْعَوْنَ لِتُفَقُّوْا فِى سَبِيلِ اللّهِ فَمِنْكُمْ مَّنْ يَبْخُلُ وَمَنْ يَبْخُلْ فَإِنَّمَا يَبْخُلْ عَن نَّفْسِهِ ۚ وَاللّهُ الْغَنِىُّ وَأَنْتُمْ الْفُقَرَاءُ وَإِن تَتَوَلَّوْا يَسْتَبْدِلْ قَوْمًا غَيْرَكُمْ ثُمَّ لَا يَكُونُوا أَمْثَلَكُمْ﴾

Here you are - those invited to spend in the cause of Allāh - but among you are those who withhold [out of greed]. And whoever withholds only withholds [benefit] from himself; and Allāh is the Free of need, while you are the needy. And if you turn away [i.e., refuse], He will replace you with another people; then they will not be the likes of you.

Also in *Sūrah al-Mā'idah* (5:54):

﴿يَآ أَيُّهَا الَّذِينَ ءَامَنُوا مَن يَرْتَدَّ مِنْكُمْ عَن دِينِهِ ۖ فَسَوْفَ يَأْتِي اللّهُ بِقَوْمٍ يُحِبُّهُمْ وَيُحِبُّونَهُ ۖ أَذِلَّةٌ عَلَى الْمُؤْمِنِينَ أَعِزَّةٌ عَلَى الْكَافِرِينَ يُجَاهِدُونَ فِى سَبِيلِ اللّهِ وَلَا يَخَافُونَ لَوْمَةَ لَآئِمٍ ۚ ذَٰلِكَ فَضْلُ اللّهِ يُؤْتِيهِ مَن يَشَآءُ ۚ وَاللّهُ وَاسِعٌ عَلِيمٌ﴾

O you who have believed, whoever of you should revert from his religion - Allāh will bring forth [in place of them] a people He will love and who will love Him [who are] humble toward the believers, powerful against the disbelievers; they strive in the cause of

Allāh and do not fear the blame of a critic. That is the favor of Allāh; He bestows it upon whom He wills. And Allāh is all-Encompassing and Knowing.

Additionally, the Prophet ﷺ said in a *Ḥadīth* collected in the *Ṣaḥīḥ*'s of both al-Bukhārī: *The Book of Jihād*, (3077) and Muslim: *The Book of Pilgrimage* (1353):

لَا هِجْرَةَ بَعْدَ الْفَتْحِ، وَلَكِنْ جِهَادٌ وَبَيَّةٌ، وَإِذَا اسْتُنْفِرْتُمْ فَانْفِرُوا

“There is no Hijrah after the conquest (of Makkah), but only Jihād and good intentions. So if you are called to march forth (for Jihād), then march forth.”⁸⁶

So how about those who refuse to march forth when the enemy is attacking from every angle and in every Muslim land, and Allāh Himself is obliging the believers to wage (defensive) *Jihād*, and not just a ‘mere’ *Imām*?

- 3) If a Muslim is present on the battlefield as the two armies approach each other, it becomes *Ḥarām* to flee, and an obligation upon everyone present to stay and fight, due to the statement of Allah ﷻ:

⁸⁶ The *Ḥadīth* is also reported in *Jāmi’ at-Tirmidhī: The Book of Military Expeditions* (1590), *Sunan Abī Dāwūd: The Book of Jihād* (2480), and *Sunan an-Nasā’ī: The Book of Bay’ah* (4170)

When the Prophet ﷺ mentioned, “no Hijrah after the conquest,” he was referring to the previously obligatory *hijrah* from Makkah to Madīnah, as Makkah after being conquered by the Muslims was now a part of the Islamic state, and thus there was no need for its inhabitants to leave it. Refer to *Hijrah: So Flee to Allāh*, for more details on the subject of *Hijrah*

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا زَحَفًا فَلَا تُوَلُّوهُمْ
 الْأَذْبَارَ ۝ وَمَنْ يُؤَلِّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلَّا مُتَحَرِّفًا لِّقِتَالٍ أَوْ مُتَحَيِّزًا إِلَى
 فِئَةٍ فَقَدْ بَاءَ بِغَضَبٍ مِّنَ اللَّهِ وَمَأْوَاهُ جَهَنَّمُ وَبِئْسَ الْمَصِيرُ ۝﴾

O you who have believed, when you meet those who disbelieve advancing [for battle], do not turn to them your backs [in flight]. And whoever turns his back to them on such a day, unless swerving [as a strategy] for war or joining [another] company, has certainly returned with anger [upon him] from Allāh, and his refuge is Hell - and wretched is the destination.

Although, as can be understood from the verse, if turning away or retreating from the enemy is part of military strategy or tactics, then such a move is considered an exemption to Allāh's promised punishment for those who flee in the face of the enemy.⁸⁷

⁸⁷ Another exemption from this rule is when the enemy is more than twice the number of the Muslims, as indicated by the verse (8:66):

﴿الْقَلَّ خَفَّفَ اللَّهُ عَنْكُمْ وَعَلِمَ أَنَّ فِيكُمْ ضَعْفًا فَإِنْ يَكُن مِّنْكُمْ مِّائَةٌ صَابِرَةٌ يَغْلِبُوا
 مِائَتَيْنِ وَإِنْ يَكُن مِّنْكُمْ أَلْفٌ يَغْلِبُوا أَلْفَيْنِ بِإِذْنِ اللَّهِ وَاللَّهُ مَعَ الصَّابِرِينَ ۝﴾

Now, Allāh has lightened [the hardship] for you, and He knows that among you is weakness. So if there are from you one hundred [who are] steadfast, they will overcome two hundred. And if there are among you a thousand, they will overcome two thousand by permission of Allāh. And Allāh is with the steadfast.

In *Mashāri al-Ashwāq* (p.1030) Ibn an-Nuḥḥās states, “If the enemy is more than double the size of the Muslim army then the Muslims are allowed to withdraw, if not then they must fight.”

However, a number of contemporary scholars, such as Shaykh Abū Yahyā al-Lībī, have argued that in the face of some of the modern weaponry employed by the enemy, such as tanks, attack helicopters, chemical weapons, and the like, consideration on the modern battlefield should be given more to actual combat power as opposed to numbers. Especially when considered that most

- 4) If a Muslim knows that due to a particular skill(s) Allāh has endowed him with that the *Mujāhidīn* lack and are in need of, then it becomes obligatory upon him specifically to participate within the capacity of his speciality. This is built on the principle:

ما لا يتم الواجب إلا به فهو واجب

‘Whatever is needed in order to fulfil that which is *Wājib*, itself becomes *Wājib*.’

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللهُ says in *Majmū’ al-Fatāwā* (29/195&196), “Therefore, those who produce weapons [...] it is *Wājib* upon them, and they should be compelled to do so (if they are not willing to use their skills in service the *Jihād*), due to the statement of the Prophet ﷺ:

وَإِذَا اسْتُنْفِرْتُمْ فَانْفِرُوا

‘So if you are called to march forth (for *Jihād*), then march forth.’

The jurist have stated likewise: Indeed, it is individually obligatory if ordered by the *Imām*. Similarly if the *Mujāhidīn* are in need of, and request manufactures and business men, such as those who produce food, clothing, weapons, combat engineers, and others (then, it likewise is obligatory upon these people to march forth). Therefore, they should be compensated for expending all of their efforts (in their field), or be compelled to (work) [...]. Additionally, if the army needs these people to

Mujāhidīn rarely have access to (physical) weapons capable of dealing with such threats on the battlefield - and Allāh knows best.

accompany them to provide (i.e. to sell) what the army cannot carry itself (then they must accompany the army to war)...”⁸⁸

As can be understood from the words of ibn Taymiyyah, this applies practically to whoever possesses expertise needed by the *Mujāhidīn*. Such as in the fields of religious knowledge, strategy and the tactics of warfare, knowledge of operating and/or maintaining particular weapons systems, communications, medical skills, combat engineering, manufacturing of weapons and explosives, media, tactical, physical and weapons training, and so on. Alternatively, he may possess crucial intelligence regarding the enemy and their disposition, plans and strategy, the terrain, and so on. However, if there is already sufficient numbers of experts in these fields (that the *Mujāhidīn* have access to) fulfilling these needs, then the obligation would fall from the remaining individuals.

- 5) In addition to the previous agreed upon instances when *Jihād* becomes an individual obligation, *Shaykh al-Islām* رحمه الله mentions a fifth scenario: The enlisted soldier (المرتزقة). This is the *Mujāhid* enlisted with the Islamic military, and receives a wage taken from the *Fay'* to fight in the way of Allāh.⁸⁹

He says in *Majmū' al-Fatāwā* (28/184&185), “*Jihād* [...] is generally a collective obligation upon the Muslims, and at times

⁸⁸ In most modern armies, all of these fields the Shaykh has mentioned would, in general, fall within the remit of logistics (CSS) and would be comprised of official military personnel rather than ‘civilians’

⁸⁹ Ibn Nuḥḥās says in *Mashāri' al-Ashwāq* (p.1052) *Fay'* (فيء) is what is taken from the disbelievers without a fight. Such as the disbelievers fearing the Muslims and running away from their positions and they leave behind booty, or if they surrender without a fight, or they pay *Jizyah*. The distribution of the *Fay'* is up to the *Imām*. (Also in the English translation, p.379)

Ibn Taymiyyah says in *as-Siyāsah ash-Shar'iyyah* (p.120), “It is called *Fay'* because Allāh has returned (أفاء) it to the Muslims. Meaning; returned to them from the disbelievers...”

becomes an individual obligation upon them. However, as for the enlisted (*Mujāhid*) who is given from the *Fay'* to wage *Jihād*, it is without doubt, *Wājib* upon him specifically (i.e. even if the *Jihād* is a collective obligation). *Wājib* according to the *Sharī'ah* and *Wājib* according to the contract he has conducted with the ruler entailing his obedience in matters related to *Jihād*. (It is also) *Wājib* upon him according to the payment (he has taken). Therefore, even if it was not obligatory upon him according to the *Sharī'ah*, or his pledge (of allegiance) to the *Imām*, then it is certainly obligatory upon him according to the fee which he has taken (in exchange for fighting), in the same way as working is obligatory upon the employee...”

This may also apply to those *Mujāhidīn* in *Jihādī* groups that receive a wage, or other kinds of support or sustenance, specifically because they are fighters (for the sake of Allāh) on behalf of that group, and Allāh ﷻ knows best.

Ibn Taymiyyah continues, “And it is also *Wājib* from the perspective of the endangerment and harm the Muslims would likely be exposed to because of their (the fighters) abandonment of *Jihād* [...] as the enlisted *Mujāhid* is responsible to defend the Muslims by virtue of his military service. Consequently, the people feel secure, content, and thus relinquish the task of defending themselves, (knowing that there are others responsible for this). Therefore, if some of these (enlisted fighters) are negligent in this regard, leaving the fighting, then this will be from the greatest of harms to the Muslims [...] in their worldly and religious affairs. Thus, the injustice of the fighter who abandons *Jihād* is one of the greatest injustices to be perpetrated (against the Muslims).”⁹⁰

- 6) It is also possible to add a sixth, albeit conditional, category - freeing the Muslims prisoners (of war). However, while undoubtedly *Wājib*, if it can be fulfilled via means other than

⁹⁰ Also in *al-Wasīṭ fī Fiqh al-Jihād wa'l-Qitāl* (pgs.15&16)

waging *Jihād*, it would not be obligatory to fight. On the other hand, if there is no other way except through fighting, then in such an instance, *Jihād* would become *Wājib* in the same fashion as in the first circumstance (i.e. when the enemy attacks), and Allāh ﷻ knows best.

In *Mashāri' al-Ashwāq* (pp.828-832) ibn an-Nuḥḥās رَحِمَهُ اللَّهُ states:

Allāh says:

﴿وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا وَاجْعَلْ لَنَا مِنْ لَدُنْكَ وَلِيًّا وَاجْعَلْ لَنَا مِنْ لَدُنْكَ نَصِيرًا ۝٧٥﴾

*And what is [the matter] with you that you fight not in the cause of Allāh and [for] the oppressed among men, women, and children who say, “Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper?”*⁹¹

Al-Qurṭubī رَحِمَهُ اللَّهُ states in his *Tafsīr* (3/245), “Allāh has mandated *Jihād* in order to raise His word high and for his religion to prevail, and to come to the rescue of the weak believers even if that would lead to the loss of lives. Freeing the Muslim POWs is mandatory, through either fighting or ransom. *Imām* Mālik says, ‘Muslims need to free the prisoners of war even if that would cost them all their wealth.’”

Al-Bukhārī رَحِمَهُ اللَّهُ reports that Abū Mūsā al-Ash’arī رَضِيَ اللَّهُ عَنْهُ narrated, the Messenger of Allāh ﷺ said:

⁹¹ *Sūrah an-Nisā’* (4):75

فُكُّوا الْعَانِي، يَعْنِي: الْأَسِيرَ، وَأَطْعِمُوا الْجَائِعَ، وَعُودُوا الْمَرِيضَ

‘Free the Prisoners Of War, feed the hungry, and visit the sick.’⁹²

The *opinion* of ash-Shāfi’ī is that freeing the prisoners of war is *Mustahab* (recommended), while *Imām* Mālik and Aḥmad ibn Ḥanbal consider it *Wājib* [...].

‘Umar bin ‘Abd al-‘Azīz stated that if a Muslim prisoner of war asks for Muslims to pay for his release, it is *Wājib* for Muslims to pay it...

Al-Qurṭubī says in the *Tafsīr* of the verse:

﴿إِنَّ الَّذِينَ ءَامَنُوا وَهَاجَرُوا وَجَاهَدُوا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فِي سَبِيلِ
اللَّهِ وَالَّذِينَ ءَاوُوا وَنَصَرُوا أُولَئِكَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ وَالَّذِينَ ءَامَنُوا وَلَمْ
يُهَاجِرُوا مَا لَكُم مِّنْ وَلِيَّتِهِم مِّن شَيْءٍ حَتَّى يُهَاجِرُوا وَإِنِ اسْتَنْصَرُوكُمْ فِي
الدِّينِ فَعَلَيْكُمْ النَّصْرُ إِلَّا عَلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِّيثَقٌ وَاللَّهُ بِمَا
تَعْمَلُونَ بَصِيرٌ﴾

But those who believed and did not emigrate - for you there is no guardianship of them until they emigrate. And if they seek help of you for the religion, then you must help, except against a people between yourselves and whom is a treaty. And Allāh is Seeing of what you do.⁹³

... If the believers who did not emigrate from the land of the enemy ask the Muslims for help whether in a military

⁹² Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions (3046)

⁹³ Sūrah al-Anfāl (8):72

of financial form to release them, it is mandatory on the Muslims to help, and it is prohibited to forsake them. The only exception is if the Muslims are bound by an agreement with the non-Muslim entity. However, this only holds if the withheld Muslims are not harmed. If they are oppressed then the Muslims need to help them.

[*Imām Abū Bakr*] ibn al-‘Arabī says, ‘Except if the Muslims are oppressed. In that case we need to secure their release until not a single eye among us blinks (even if we all die) or we spend all of our wealth in the process.’

These are the opinions of Mālik and all the scholars, and ***indeed to Allāh do we belong and to Him is our return!*** How unfortunate is it to see today our brothers left in the prisons of the enemy while our treasuries are full of money and we are full of strength.”⁹⁴ [...].

An-Nawawī considers that the ruling on freeing the prisoner is similar to the ruling on the enemy invading a Muslim land. In fact, he considers freeing the prisoner of war to be more of a priority because the sanctity of the Muslim soul is greater than that of the Muslim land.

⁹⁴ *Jāmi’ li-Aḥkām al-Qur’ān* (4/411&412)

CHAPTER SUMMARY

The majority of scholars have agreed upon *Jihād* becoming an individual obligation in the following situations:

- 1) If the disbelievers attack, or are preparing to attack the Muslims
- 2) If the *Imām* calls upon an individual, or group to march forth
- 3) If a Muslim is present at the scene of battle when the two armies meet
- 4) If an individual or group know that the Muslims are in need of a skill or expertise they specifically possess
- 5) And scholars, such as *Shaykh al-Islām* ibn Taymiyyah رَحِمَهُ اللهُ, add the enlisted *Mujāhid*, who is compensated (from the *Fay'*) for his *Jihād* for the sake of Allāh ﷻ

CHAPTER 7

شروط وجوب الجهاد

CONDITIONS FOR JIHĀD BECOMING OBLIGATORY UPON AN INDIVIDUAL⁹⁵

There are a number of conditions that must be present within an individual in order for the obligation of *Jihād* to become binding upon him. They are:

الإسلام ISLĀM

The scholars have agreed from amongst the conditions for *Jihād* to become *Wājib* upon an individual is Islām. Therefore, *Jihād* is not obligatory on the disbeliever. Scholars have likewise stated that the *Imām* should not allow the disbeliever to march forth with Muslim army. They cite as evidence for this prohibition the *Ḥadīth* of ‘Ā’ishah رضي الله عنها, in which she said:

⁹⁵ The type of *Jihād* that is being referred to is its default status - that of offensive *Jihād*, and not the individually obligated defensive *Jihād*.

خَرَجَ رَسُولُ اللَّهِ ﷺ قِبَلَ بَدْرٍ، فَلَمَّا كَانَ بِحَرَّةِ الْوَبَرَةِ أَدْرَكَهُ رَجُلٌ قَدْ كَانَ يُذَكِّرُ مِنْهُ جُرْأَةً وَنَجْدَةً، فَفَرِحَ أَصْحَابُ رَسُولِ اللَّهِ ﷺ حِينَ رَأَوْهُ، فَلَمَّا أَدْرَكَهُ قَالَ لِرَسُولِ اللَّهِ ﷺ: جِئْتُ لِاتَّبِعَكَ، وَأُصِيبَ مَعَكَ، قَالَ لَهُ رَسُولُ اللَّهِ ﷺ: تُؤْمِنُ بِاللَّهِ وَرَسُولِهِ؟ قَالَ: لَا، قَالَ: فَارْجِعْ، فَلَنْ أَسْتَعِينَ بِمُشْرِكٍ، قَالَتْ: ثُمَّ مَضَى حَتَّى إِذَا كُنَّا بِالشَّجَرَةِ أَدْرَكَهُ الرَّجُلُ، فَقَالَ لَهُ كَمَا قَالَ أَوَّلَ مَرَّةٍ، فَقَالَ لَهُ النَّبِيُّ ﷺ كَمَا قَالَ أَوَّلَ مَرَّةٍ، قَالَ: فَارْجِعْ، فَلَنْ أَسْتَعِينَ بِمُشْرِكٍ، قَالَ: ثُمَّ رَجَعَ فَأَدْرَكَهُ بِالْبَيْدَاءِ، فَقَالَ لَهُ كَمَا قَالَ أَوَّلَ مَرَّةٍ: تُؤْمِنُ بِاللَّهِ وَرَسُولِهِ؟ قَالَ: نَعَمْ، فَقَالَ لَهُ رَسُولُ اللَّهِ ﷺ: فَانْطَلِقْ

The Messenger of Allāh ﷺ set off for Badr. When he reached Harrat al-Wabarah (a place four miles from Madīnah) a man met him who was known for his valour and courage. The companions of the Messenger of Allāh were pleased to see him. He said, “I have come that I may follow you and get a share of the booty.” The messenger of Allāh said to him, “*Do you believe in Allāh and His messenger?*” he said, “No.” The messenger of Allāh said, “*Go back, I will never seek help from a polytheist.*” He went on until he reached Shajarah, where the man met him again. He asked the same question again, and the man gave him the same answer. He said, “*Go back I will never seek the help of a polytheist.*” The man returned and overtook him at Baydā’. He asked him as he had asked him previously, “*Do you believe in Allāh and His Messenger?*” the man said, “Yes.” The Messenger of Allāh said to him, “*Then come along with us.*”⁹⁶

⁹⁶ Ṣaḥīḥ Muslim: *The Book of Jihād and Expeditions* (1817) and *Jāmi’ at-Tirmidhī: The Book of Military Expeditions* (1558)

العقل

SOUNDNESS OF MIND

Jihād is not *Wājib* upon the insane, as they are not from those deemed Islamically responsible for their actions, thus none of the obligations in Islām are binding upon them until, and unless they are free from this state.

This is evident in the statement of the Prophet ﷺ, recorded in the books of *Sunan*:

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الْمُبْتَلَى حَتَّى يَبْرَأَ،
وَعَنِ الصَّبِيِّ حَتَّى يَكْبُرَ

*“The pen has been lifted from three (i.e. there are three people whose actions will not be recorded): from the sleeping till he awakes, from the minor until he attains the age of puberty, and from the insane until he comes back to his senses or recovers.”*⁹⁷

In addition to *Jihād* not being *Wājib* upon the insane, the leader should prevent them from accompanying the Muslim forces on any operation, in addition to preventing him from having access to weapons in any situation.⁹⁸

⁹⁷ *Sunan an-Nasā'ī: The Book of Divorce* (3432), *Sunan Abī Dāwūd: The Book of the Prescribed Punishments* (4398 & 4403), *Sunan ibn Mājah: The Book of Expeditions* (2119), and *Jāmi' at-Tirmidhī: The Book on Legal Punishments* (1423). Authenticated by al-Albānī in *Sahīh Sunan ibn Mājah* (1660)

⁹⁸ Examples of the damaging consequences of not adhering to this ‘common sense’ principle are unfortunately too frequent. The same principle should also be applied to children, until they attain a sufficient level of responsibly to be allowed to handle weapons, especially those with the potential to be lethal - and Allāh ﷻ knows best.

البلوغ MATURITY

In Islām, a child is considered mature and accountable for his or her actions when they reach the age of puberty.

Ibn Ḥazm رَحِمَهُ اللَّهُ states in his work, *Marātib al-Ijmā'* (p.119), the scholars have consensus (*Ijmā'*) that *Jihād* is not obligatory on the child.

Furthermore, the Messenger of Allāh ﷺ would, in general, prevent boys under the age of fifteen from participating in the fighting, as can be seen in the following narration collected in *Sahīh al-Bukhārī: The Book of Witnesses* (2664):

Nāfi' narrated from ibn 'Umar رَضِيَ اللَّهُ عَنْهُ:

أَنَّ رَسُولَ اللَّهِ ﷺ عَرَضَهُ يَوْمَ أُحُدٍ، وَهُوَ ابْنُ أَرْبَعِ عَشْرَةَ سَنَةً، فَلَمْ يُجِزْنِي ثُمَّ عَرَضَنِي يَوْمَ الْخَنْدَقِ، وَأَنَا ابْنُ خَمْسِ عَشْرَةَ سَنَةً، فَأَجَازَنِي

“That he (ibn 'Umar) presented himself to the Messenger of Allāh ﷺ (for battle) on the day of Uḥud, and he was fourteen years old, but he did not permit him (to fight). He (again) presented himself on the day of the Trench when he was fifteen, and he permitted him (to fight).”⁹⁹

However, there was at least one exception to the above rule, which was took place prior to the battle of Uḥud: According to al-Mubarakpuri رَحِمَهُ اللَّهُ in *The Sealed Nectar* (p.250), “The

⁹⁹ Also in *Sunan an-Nasā'ī: The Book of Divorce* (3431), *Sunan Abī Dāwūd: The Book of Prescribed Punishments* (4406), *Sunan ibn Mājah: The Book of Legal Punishments* (2543), and *Sahīh ibn Ḥibbān* (142)

Messenger of Allāh ﷺ allowed both Rāfi' bin Khadayj and Samura bin Jundub to join the army - though they were too young. The former proved to be skilful at shooting arrows; the latter wrestled the former and beat him. The admission of Rāfi' made Samura say: 'I am stronger than him, I can overcome him.' When the Prophet ﷺ heard him saying this, he ordered them to wrestle. They did. Samura won so he was also admitted." ¹⁰⁰

الذكورية

BEING MALE

According to ibn Ḥazm رَحِمَهُ اللَّهُ, there is a consensus among scholars that *Jihād* (fighting) is not obligatory upon women.¹⁰¹ This can be understood from the *Ḥadīth* of 'Ā'ishah رَضِيَ اللَّهُ عَنْهَا, in which she said:

يَا رَسُولَ اللَّهِ عَلَى النِّسَاءِ جِهَادٌ؟ قَالَ: نَعَمْ، عَلَيْهِنَّ جِهَادٌ، لَا قِتَالَ فِيهِ:
الْحَجُّ وَالْعُمْرَةُ

"O Messenger of Allāh, is *Jihād* obligatory on the women?" He replied, "Yes, upon them is *Jihād*, (but) with no fighting involved in it: *Hajj* and 'Umrah.'" ¹⁰²

In another narration in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād* (2784), she said رَضِيَ اللَّهُ عَنْهَا:

¹⁰⁰ Aṣ-Ṣallābī also mentions this incident in the *Noble Life of the Prophet* ﷺ (2/1112), as does ibn Kathīr in his *Sīrah* (3/20), however he states they were both 15 years old at the time

¹⁰¹ Refer to *Marātib al-Ijmā'* (p.119)

¹⁰² *Musnad Aḥmad* (6/75), *Sunan ibn Mājah* (2901), *ad-Darqūṭnī* (2/284), and *al-Kubrā al-Bayhaqī* (8540). Authenticated by al-Albānī in *Ṣaḥīḥ Sunan ibn Mājah* (2345)

يَا رَسُولَ اللَّهِ تُرَى الْجِهَادُ أَفْضَلَ الْعَمَلِ، أَفَلَا نُجَاهِدُ؟ قَالَ: لَكِنَّ أَفْضَلَ
الْجِهَادِ حَجٌّ مَبْرُورٌ

“We see that *Jihād* is the best of deeds, so shouldn’t we participate in *Jihād*?” He replied ﷺ, “(Yes), but the best *Jihād* for women is an accepted *Hajj*.”¹⁰³

Imām an-Nawawī رحمه الله said in *Rawḍah at-Ṭālibīn* (10/209), “And the *Imām* may grant permission for the pre-pubescent boys and the women to accompany the army for the purposes of serving water, nursing the sick, and treating the wounded. However, he should not permit the insane under any circumstances; (also) *Jihād* is not obligatory upon the hermaphrodite.”¹⁰⁴

Imām Muḥammad ibn ‘Isā ibn Aṣḥab al-Azdī رحمه الله commented, “And this is from the *Sunnah*, unless it is only a small raiding party going out, and it is feared that the enemy may overcome them (the women).”¹⁰⁵

The evidence for the permissibility of women accompanying the *Mujāhidīn* on their expeditions is found in numerous narrations. From amongst then is the narration in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1810), from Anas ibn Mālik رضي الله عنه stating:

كَانَ رَسُولُ اللَّهِ ﷺ يَغْزُو بِأُمَّ سُلَيْمٍ وَنِسْوَةٍ مِنَ الْأَنْصَارِ مَعَهُ إِذَا غَزَا،
فَيَسْقِيَنَ الْمَاءَ، وَيُدَاوِينَ الْجَرْحَى

¹⁰³ Also in *Ṣaḥīḥ al-Bukhārī; the Book of Hajj* (1520), and in *Sunan an-Nasā’ī: The Book of Hajj* (2628)

¹⁰⁴ Also in *Asnā al-Muṭālib* (4/176)

¹⁰⁵ *Al-Injād fī Abwāb al-Jihād* (p.86)

“The Messenger of Allāh ﷺ used to take Umm Sulaym and (other) women from the *Anṣār* with him when he used to go out on expeditions. They would serve water and nurse the wounded.”¹⁰⁶

In his explanation of the above narration, *Imām* an-Nawawī رحمه الله comments, “... and this nursing was for their close relatives (i.e. who were *Maḥram*) and husbands, and not for other than them. Likewise, they did not touch the skin (of others than their *Maḥram*) except in situations of necessity.”¹⁰⁷

Appearing in another narration in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1812), ibn ‘Abbās said رحمه الله:

... كَتَبْتُ تَسْأَلُنِي هَلْ كَانَ رَسُولُ اللَّهِ ﷺ يَغْزُو بِالنِّسَاءِ؟ وَقَدْ كَانَ يَغْزُو بِهِنَّ، فَيُدَاوِينَ الْجُرْحَى، وَيُحْذِينَ مِنَ الْغَنِيمَةِ، وَأَمَّا بِسَهْمٍ فَلَمْ يَضْرِبْ لَهُنَّ ...

“... You (Najdah) have written to me asking me whether the Messenger of Allāh ﷺ took women with him to participate in *Jihād*. He did take them to battle, and sometimes he fought along with them. They would treat the wounded and were given a reward from the booty, but he did not assign a regular share for them...”

In addition, Anas رحمه الله narrates in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1809):

أَنَّ أُمَّ سُلَيْمٍ اتَّخَذَتْ يَوْمَ حُنَيْنٍ خِنْجَرًا، فَكَانَ مَعَهَا، فَرَأَاهَا أَبُو طَلْحَةَ، فَقَالَ: يَا رَسُولَ اللَّهِ، هَذِهِ أُمُّ سُلَيْمٍ مَعَهَا خِنْجَرٌ، فَقَالَ لَهَا رَسُولُ اللَّهِ

¹⁰⁶ Also in *Sunan Abī Dāwūd: The Book of Jihād* (2531) and *Jāmi’ at-Tirmidhī: The Book of Military Expeditions* (1575)

¹⁰⁷ *Al-Minhāj Sharḥ al-Jāmi’ aṣ-Ṣaḥīḥ* (4/1915)

عَلَيْهِ السَّلَامُ: مَا هَذَا الْخِنْجَرُ؟ قَالَتْ: اتَّخَذْتُهُ إِنْ دَنَا مِنِّي أَحَدٌ مِنَ الْمُشْرِكِينَ، بَقَرْتُ بِهِ بَطْنَهُ، فَجَعَلَ رَسُولُ اللَّهِ ﷺ يَضْحَكُ ...

That on the day of Hunayn, Umm Sulaym took out a dagger she had in her possession. Abū Ṭalḥah saw her and said, “Messenger of Allāh, this is Umm Sulaym. She is holding a huge dagger!” The Messenger of Allāh asked her, “What are you holding this dagger for?” She replied, “I took it so that I may tear open the belly of any polytheist that comes near me.” The Messenger of Allāh then began to laugh (at her words)...¹⁰⁸

However, ibn Qudāmah رَحِمَهُ اللَّهُ says in *al-Mughnī* (9/214&215), “Women should not enter into the land of the enemy with the Muslims (i.e. the Army) except those advanced in age; to provide drinking water and to nurse the injured fighters, as (they did in the time of) the Prophet ﷺ [...]”

In conclusion, it is disliked for the young women to enter the lands of the enemy; as they are (in general) not from the people of fighting (i.e. fighters) - their benefit towards the fighting is minimal, and they are prone to be overwhelmed by fright and cowardliness. They are also not safe from the enemy overcoming them, and permitting for themselves what Allāh has forbidden from the (Muslim) women for them (i.e. enslaving them and violating their chastity).

It is narrated by Ḥashraj ibn Ziyād from his grandmother (on his father’s side) that:

«خَرَجْتُ مَعَ رَسُولِ اللَّهِ ﷺ فِي غَزْوَةِ خَيْبَرَ سَادِسَةَ سِتِّ نِسْوَةٍ، فَبَلَغَ رَسُولَ اللَّهِ ﷺ فَبَعَثَ إِلَيْنَا، فَجِئْنَا، فَرَأَيْنَا مِنْهُ الْعُصْبَ، فَقَالَ: مَعَ مَنْ خَرَجْتُنَّ؟ فَقُلْنَا: يَا رَسُولَ اللَّهِ، خَرَجْنَا نَغْزِلُ الشَّعْرَ، وَنُعِينُ بِهِ فِي سَبِيلِ اللَّهِ، وَمَعَنَا دَوَاءٌ لِلْجَرَحَى، وَنُتَاوِلُ السَّهَامَ، وَنَسْقِي السَّوِيقَ. فَقَالَ:

¹⁰⁸ A similar narration is also recorded in *Sunan Abī Dāwūd: The Book of Jihād* (2718)

فُئِمْنَ. حَتَّى إِذَا فَتَحَ اللَّهُ خَيْبَرَ أَسْهَمَ لَنَا، كَمَا أَسْهَمَ لِلرِّجَالِ، فَقُلْتُ لَهَا:
يَا جَدَّةُ، مَا كَانَ ذَلِكَ؟ قَالَتْ: تَمَرًا»

She went out with the Messenger of Allāh ﷺ for the battle of Khaybar. They were six in number including herself. (She said): “When the Messenger of Allāh ﷺ was informed about it, he sent for us. We came to him and found him angry. He said, ‘*With whom, and with whose permission did you come out?*’ We said, ‘Messenger of Allāh, we have come out to spin the hair, by which we will provide aid in the cause of Allāh. We have medicine for the wounded, we hand arrows (to the fighters), and supply *Sawīq* (i.e. a drink made from wheat or barley).’ He said, ‘*(then) stand up.*’ When Allāh granted us victory over Khaybar, we were given a share of the booty equal to that of the men.” I (Ḥashraj ibn Ziyād) asked her, and what was that? She said, “Dates.” ¹⁰⁹

He also says (9/206), “The opinion of Abī ‘Abdullāh (*Imām Aḥmad*) is that it is *Makrūh* (disliked) to take women and children to the dangerous border lands (الثغور المخوفة). this is also the opinion of al-Ḥasan and al-Awzā’ī [...] due to the dangerous border lands (as opposed to those in which enemy attack is relatively unlikely) not being safe from the enemy gaining victory over them, whoever else is present, and overtaking the women and children.” ¹¹⁰

However, this does not apply to the people who normally reside in the border lands of Islām (as opposed to those who do not live there, but travel there specifically for the purposes of *Jihād* and

¹⁰⁹ *Sunan Abī Dāwūd: Book of Jihād* (2792). Al-Albānī graded it is *Ḍa’if* *Al-Mughnī* has a paragraph numbering system, in which the paragraphs or topics are numbered (sometimes with the exception of chapter, or sub-chapter headers). In the main body of this work, the volume and page number will be given, while in the footnotes the paragraph number (if present) will be provided. The number for the above paragraph is (7440)

¹¹⁰ *Al-Mughnī* (7428)

Ribāṭ). He (i.e. *Imām Aḥmad*) says (9/207), “As for the people of the land (أهل ثغر), then it is a must that they live there with their families, for if it was not for that then the borders would be ruined and (the defence) would break down.” (Ibn Qudāmah continues), “(What Aḥmad said about it being disliked for the believer to move with his family to the border lands) is specifically for those (border lands) that are (highly) dangerous, and the evidence for this is that he considered living in Damascus and similar places preferable (over other places), despite these places being from the border lands. For, (in general) they were safe, and safe(r) for their residents.”

Nevertheless, *Jihād* may become an individual obligation upon the woman at times, such as when she is physically attacked, or when the *Jihād* itself becomes an individual obligation for those present in her area, as is stated by the majority of the scholars of *Fiqh*.

In *ad-Dur al-Mukhtār (Ḥanafī)* (4/127), “(fighting) becomes an individual obligation if the enemy attacks. In this case, even without permission, everybody should march forth. Thus, the husband, and other than him, is sinful for attempting to prevent (the wife from marching forth).”

Although, it appears most likely - and Allāh knows best - that when the scholars would make statements such as the above, it is referring to when the enemy attack is in the same vicinity (i.e. town or village) as the woman. Meaning that if she does not fight to defend herself, she is at real risk of being overtaken by the enemy. However, unlike with men, if it is suspected beforehand that the enemy is likely to attack a particular area, there is no problem in evacuating the women and children to safer areas, like the Prophet ﷺ did before the battle of the Trench. At that time, he ﷺ ordered the women to evacuate the areas expected to become frontlines, and barricade themselves in the fortresses

located towards the interior of the city during the battle.¹¹¹ Consequently, it is not upon the woman to travel away from her area for the purposes of fighting, but rather it is upon her to wage *Jihād*, as it ought to be waged, with her wealth and tongue - and with Allāh lays all success, and may He guide us and our beloved sisters in Islām to that which pleases Him ﷺ.¹¹²

الحرية

FREEDOM

Jihād is not *Wājib* upon the slave. This is because it is (in general) an '*Ibādah* that involves travelling long distances, thus in the same way that *Hajj* is not it is not obligatory on the slave neither is (offensive) *Jihād*.

الاستطاعة

ABILITY

This condition necessitates that the *Mujāhid* must be capable of waging *Jihād*. Accordingly, *Jihād* is not *Wājib* upon the incapable, in accordance with the general principle:

¹¹¹ Refer to *Sūrah al-Aḥzāb* (33) for a divine commentary on the battle. Additionally, refer to the biographical accounts for details of this decisive and pivotal battle during the lifetime of the Prophet ﷺ

¹¹² Refer to works such as Shaykh Abū Qatādah's, *The Education of Jihad and Sacrifice*; Shaykh Anwar al-Awlaki's, *44 ways to Support Jihād*; Shaykh Yuusuf al-'Uyayrī's, *The Role of Women in Fighting the Enemies*; and Umaina Hassan Ahmed Mohammed Hassan's, *To the Muslim Women after the uprisings*

﴿لَا يَكْفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا﴾

*Allāh does not charge a soul except [with that within]
its capacity*¹¹³

This is also evident in the following narration from *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (2839), wherein Anas رَضِيَ اللَّهُ عَنْهُ said:

أَنَّ النَّبِيَّ ﷺ كَانَ فِي غَزَاةٍ، فَقَالَ: إِنَّ أَقْوَامًا بِالْمَدِينَةِ خَلَفْنَا، مَا سَلَكْنَا شِعْبًا وَلَا وَادِيًا إِلَّا وَهُمْ مَعَنَا فِيهِ، حَبَسَهُمُ الْعُذْرُ

While the Prophet ﷺ was on an expedition he said, “Some people have remained behind us in Madīnah, and did not cross a mountain pass or valley, but they were with us (i.e. with their hearts, and in sharing the reward), as they have been held back by (a legitimate) excuse.”

While in a similar narration in *Sunan Abī Dāwūd: The Book of Jihād* (2508), Anas رَضِيَ اللَّهُ عَنْهُ said:

أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: لَقَدْ تَرَكْتُمْ بِالْمَدِينَةِ أَقْوَامًا مَا سِرْتُمْ مَسِيرًا، وَلَا أَنْفَقْتُمْ مِنْ نَفَقَةٍ، وَلَا قَطَعْتُمْ مِنْ وَادٍ، إِلَّا وَهُمْ مَعَكُمْ فِيهِ، قَالُوا: يَا رَسُولَ اللَّهِ، وَكَيْفَ يَكُونُونَ مَعَنَا، وَهُمْ بِالْمَدِينَةِ؟ فَقَالَ: حَبَسَهُمُ الْعُذْرُ

The Prophet ﷺ said, “Indeed you have left people behind you in Madīnah who did not travel any distance, spend any expenditure, nor cross any valley, except that they were with you (i.e. with their hearts, and in sharing the reward).” They (i.e. the Companions) asked, “O Messenger of Allāh, how can they be with us and they are back in Madinah?” He replied, “(Because) they have been held back by (a legitimate) excuse.”

¹¹³ Al-Baqarah (2):286

It is possible to divide ability into two broad categories, each independent of the other:

- a) Physical Ability
- b) Financial Ability

الاستطاعة البدنية PHYSICAL ABILITY

Amongst those mentioned in the Qur'ān as being except from having to participate in fighting due to a physical incapacity, are those listed in *Sūrah al-Fath* (48:17):

﴿لَيْسَ عَلَى الْأَعْمَى حَرْجٌ وَلَا عَلَى الْأَعْرَجِ حَرْجٌ وَلَا عَلَى الْمَرِيضِ حَرْجٌ﴾

There is not upon the blind, the lame, or upon the ill any guilt [for remaining behind].

Since those mentioned in the above verse lack the physical capacity to fight, Allāh excuses them as long as their physical inability persists (as in the case of the acutely ill, or the one suffering from a broken bone).

However, as with every affair of the believer, he must adhere to the principle, outlined in *Sūrah at-Taghābun* (64:16) which stipulates:

﴿فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ﴾

Fear Allāh as much as you are able.

Thus, regarding Allāh's commands, the believer is required to do everything that is within his capability to fulfil them; whereas whatever is beyond this is pardoned. This is particularly relevant

when one considers that *Jihād* (actual fighting) is supported by a large infrastructure of ‘non-combatant’ roles enabling and directly supporting the actual combat. Without such supportive roles, the *Jihād* would not be able to function in the way Allāh ﷻ intended - and He knows best.¹¹⁴

Moreover, many contemporary weapons systems do not rely upon physical strength, but rather require intelligence and are more akin to computers than to older mechanical-type weapons systems.¹¹⁵ Hence, the principle of *Fiqh*:

الحكم يدور مع علته (وجوداً عدماً)

‘The ruling revolves around the cause for issuing it,’
... would apply in this case as follows: If the ruling regarding the exemption from *Jihād* of the physically impaired caused by his

¹¹⁴ Examples of such Combat Support Services that existed in the era of the Prophet ﷺ and his Companions were roles such as the women’s jobs of transporting water, nursing the sick and injured, digging graves and burying the dead, in addition to the psychological and moral support they provided to the fighters. Additionally, the Prophet ﷺ had herders that used to tend to the horses and camels used in *Jihād* during the periods in between the battles and expeditions.

While in contemporary *Jihād*, similar roles are also required such as: combat medics; surgeons; drivers to transport *Mujāhidīn*, ammunition, supplies, etc.; mechanics; engineers; military trainers; unmanned aircraft (UAV) operators; media; military research and development; and son on.

Shaykh al-Islām ibn Taymiyyah speaks about some of these roles in the 28th volume of *Majmū’ al-Fatāwā: Kitāb al-Jihād*, likewise so does as-Sa’dī in his *Tafsīr* on the noble verse 8:60.

The US military refers to many of these logistical roles as Combat Service Support (CSS), and has manuals dedicated to this military field, such as *FM 100-10: Combat Service Support*

¹¹⁵ Examples of these modern weapons systems are; remotely operated weapons such as Unmanned Aircraft (UAVs), VBIEDs (Vehicular Bourne Improvised Explosive Devices), IEDs; also weapons such as ATGMs (Anti-Tank Guided Missiles), cyber and electronic based weapons, and so on

physical inability to fight is removed, then so does his exemption.

For example, if a believer is unable to participate in the infantry because of a physical impairment preventing him from fulfilling an infantryman's duties, however he is able to operate a drone, or cook for the *Mujāhidīn*. He would be exempted from being an infantryman, but not from any of the other roles within his capability.

Likewise, exemption from physical *Jihād* in no way, in and of itself, exempts the believer from *Jihād* of the wealth, or the tongue, according to the principle: ***Fear Allāh as much as you are able.***¹¹⁶

In accordance with this, ibn Taymiyyah رَحْمَةُ اللَّهِ states in *al-Fatāwā al-Kubrā: Kitāb al-Jihād* (5/537), “Whoever is unable to perform *Jihād* with himself (i.e. fighting) and has the ability to perform *Jihād* with his wealth; then it remains *Wājib* upon him to wage *Jihād* with his wealth [...]. It is (also) *Wājib* upon the women if they are able, and likewise upon the wealth of the minor, if a need for it exists.”

الاستطاعة المالية

FINANCIAL ABILITY

Jihād is not *Wājib* on the one lacking the financial capability to perform it, as is evident from the following verse in *Sūrah at-Tawbah* (9:91):

¹¹⁶ Rather, every aspect of *Jihād* needs to be examined independently when assessing an individual for legitimate exemption

لَيْسَ عَلَى الضَّعَفَاءِ وَلَا عَلَى الْمَرْضَى وَلَا عَلَى الَّذِينَ لَا يَجِدُونَ مَا
يُنْفِقُونَ حَرَجٌ إِذَا نَصَحُوا لِلَّهِ وَرَسُولِهِ مَا عَلَى الْمُحْسِنِينَ مِنْ
سَبِيلٍ وَاللَّهُ غَفُورٌ رَحِيمٌ ﴿٩١﴾

There is not upon the weak or upon the ill or upon those who do not find anything to spend any discomfort [i.e., guilt] when they are sincere to Allāh and His Messenger. There is not upon the doers of good any cause [for blame]. And Allāh is Forgiving and Merciful.

Al-Baghawī رحمه الله quotes ibn ‘Abbās رضي الله عنه in his *Tafsīr* (p.576) *Mu’ālim at-Tanzīl*, as saying, “The weak are the sincere, incapable, and elderly.” He continues, “And it is also said that they are the children, (while in another opinion), the women.”

Shaykh al-Islām ibn Taymiyyah رحمه الله has explained the words, *when they are sincere to Allāh and His Messenger*, “Their intentions (of going out for Jihād) are sincerely, and out of love for Allāh and His Messenger.”¹¹⁷

While al-Qurtubī رحمه الله says in his *Tafsīr* (4/547), “If they know the truth, love its supporters, and hate its enemies.” He then goes on to mention the incident in which ibn Umm Maktūm رضي الله عنه marched forth to Uhūd and requested to be given the banner (of war), but instead it was given to Muṣ’ab ibn Umayr, who was eventually martyred while protecting it.¹¹⁸ He also says (4/549), “Sincerity is (in) purifying the deeds from deception.”

¹¹⁷ *Tafsīr Shaykh al-Islām ibn Taymiyyah* (3/437)

¹¹⁸ Ibn Umm Maktūم رضي الله عنه was a blind Companion and the *Mu’adhdhin* (caller to prayer, along with Bilāl رضي الله عنه) of the Prophet ﷺ. Upon requesting the banner he pleaded, that since he was a blind man, he would not see the enemy or the horrors of battle, and thus would not be tempted to retreat during battle.

Ibn Kathīr رَحِمَهُ اللهُ says in his *Tafsīr* (4/496), "... Upon them is no blame when they remain behind, *if* they are sincere in their state of remaining behind; not spreading false rumours and speech that discourages, instils fear, or weakens the resolve and morale of the Muslims. (Also, in addition to this) in their state (or remaining behind) they are from the *Muḥsinīn* (i.e. those of exemplary character and behaviour)."

The preceding verse is also explained by its following verses (9:92&93), wherein Allah ﷻ says:

﴿وَلَا عَلَى الَّذِينَ إِذَا مَا أَتَوْكَ لِتَحْمِلَهُمْ قُلْتَ لَا أَجِدُ مَا أَحْمِلُكُمْ عَلَيْهِ تَوَلَّوْا وَأَعْيُنُهُمْ تَفِيضُ مِنَ الدَّمْعِ حَزَنًا أَلَّا يَجِدُوا مَا يُنْفِقُونَ ﴿٩٢﴾ إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَسْتَأْذِنُونَكَ وَهُمْ أَغْنِيَاءُ رَضُوا بِأَن يَكُونُوا مَعَ الْخَوَالِفِ وَطَبَعَ اللَّهُ عَلَى قُلُوبِهِمْ فَهُمْ لَا يَعْلَمُونَ ﴿٩٣﴾﴾

Nor [is there blame] upon those who, when they came to you that you might give them mounts, you said, "I can find nothing for you to ride upon." They turned back while their eyes overflowed with tears out of grief that they could not find something to spend [for the cause of Allāh].

The cause [for blame] is only upon those who ask permission of you while they are rich. They are satisfied to be with those who stay behind, and Allāh has sealed over their hearts, so they do not know.

Ibn Qayyim رَحِمَهُ اللهُ raises another important issue related to those legitimately excused because of inability; which is the requirement for them to present themselves to the *Amīr*, like those mentioned in the above verse (9:92). If then, and only then,

he excuses them from having to participate in the *Jihād*, whilst they are grieved at not being able to (physically) participate and constantly remain *sincere to Allāh and His Messenger*; they are then considered free from blame.

He states in *Zād al-Ma'ād* (2/306):

“Likewise, if the *Imām* calls upon the army to go to war, they must go and it is not permissible for anyone to remain behind without his permission. And it is not a condition of the obligation that every person is individually called upon. [...]

Also, it is *Wājib* to perform *Jihād* with one's wealth, just as it is obligatory to perform it with one's body. This is the correct opinion of which there is no doubt. Moreover, it takes precedence over the obligation to wage *Jihād* with one's body in all circumstances except one, which proves that it is more imperative than *Jihād* with one's body. For, if it is incumbent upon one who is unable to perform *Hajj* himself to pay someone to perform it on his behalf, then the obligation to perform *Jihād* with one's wealth is more worthy. [...]

We also understand that the one who is unable to wage *Jihād* with his wealth is not excused unless he has exerted himself to the utmost, because Allāh, Most Glorified, only negated the sin upon those who were unable after they had come to His Messenger ﷺ asking him to provide mounts for them, they then returned weeping.”¹¹⁹

As such, if finances required for travelling and the purchase of weapons and other essential equipment needed in order to participate in *Jihād* are absent, permission has been sought, and

¹¹⁹ Also in *Provisions for the Hereafter (Abridged)* (pgs.426&427)

there exists sincerity to Allāh and His Messenger ﷺ, then the believer is absolved (temporarily) from the obligation until his situation of poverty is alleviated. Aside from these excuses, the *Sharī'ah* does not permit, as it neither did for the Companions رَضِيَ اللَّهُ عَنْهُمْ, any other excuses, such as the fear of death or imprisonment, the blame of the blamers, or from falling into 'Fitnah' due to the presence of attractive women in the lands of *Jihād*.

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللَّهُ says in his introduction to *Sūrah at-Tawbah*, in which he proceeds to mention how Allāh uses the characteristics of cowardice and stinginess to distinguish the believer from the hypocrite:

“Allāh says:

﴿لَا يَسْتَعِذُّكَ الَّذِينَ يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يُجَاهِدُوا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ وَاللَّهُ عَلِيمٌ بِالْمُتَّقِينَ ٩٤﴾ إِنَّمَا يَسْتَعِذُّكَ الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَآرْتَابَتْ قُلُوبُهُمْ فَهُمْ فِي رَيْبِهِمْ يَتَرَدَّدُونَ ﴿٩٥﴾﴾

Those who believe in Allāh and the Last Day would not ask permission of you to be excused from striving [i.e., fighting] with their wealth and their lives. And Allāh is Knowing of those who fear Him. Only those would ask permission of you who do not believe in Allāh and the Last Day and whose hearts have doubted, and they, in their doubt, are hesitating. ¹²⁰

This is Allāh ﷻ informing (the believers) that the (true) believer does not seek permission from the Messenger ﷺ to abandon

¹²⁰ *Sūrah at-Tawbah* (9):44&45

Jihād, and it is only one who does not believe that seeks the Messenger's permission. So how then about the one who abandons *Jihād* without even seeking permission?"¹²¹

Then, after mentioning the verse (9:54):

﴿وَمَا مَنَعَهُمْ أَنْ تُقْبَلَ مِنْهُمْ نَفَقَتُهُمْ إِلَّا أَنْتُمْ كَفَرُوا
بِاللَّهِ وَرَسُولِهِ وَلَا يَأْتُونَ الصَّلَاةَ إِلَّا وَهُمْ كُسَالَى
وَلَا يُنْفِقُونَ إِلَّا وَهُمْ كَارِهُونَ﴾

And what prevents their expenditures from being accepted from them but that they have disbelieved in Allāh and in His Messenger and that they come not to prayer except while they are lazy and that they do not spend except while they are unwilling.

The Shaykh رحمه الله says, “(If) this is the situation for the one who spends reluctantly, then what about the one who does not even spend (at all)? And He says (9:58):

﴿وَمِنْهُمْ مَّنْ يَلْمِزُكَ فِي الصَّدَقَاتِ فَإِنْ أُعْطُوا مِنْهَا رَضُوا وَإِنْ لَمْ
يُعْطُوا مِنْهَا إِذَا هُمْ يَسْخَطُونَ﴾

And among them are some who criticize you concerning the [distribution of] charities. If they are given from them, they approve; but if they are not given from them, at once they become angry.

Moreover (9:75&76):

¹²¹ *Tafsīr Shaykh al-Islām ibn Taymiyyah* (3/292)

﴿ وَمِنْهُمْ مَّنْ عَاهَدَ اللَّهَ لَإِنْ ءَاتَيْنَا مِنْ فَضْلِهِ لَنَصَّدَّقَنَّ وَلَنَكُونَنَّ مِنَ الصَّالِحِينَ ﴿٧٥﴾ فَلَمَّا ءَاتَاهُمْ مِّنْ فَضْلِهِ بَخِلُوا بِهِ وَتَوَلَّوْا وَهُمْ مُّعْرِضُونَ ﴿٧٦﴾ ﴾

And among them are those who made a covenant with Allāh, [saying], “If He should give us from His bounty, we will surely spend in charity, and we will surely be among the righteous.” But when He gave them from His bounty, they were stingy with it and turned away while they refused.

While He ﷻ also says in the chapter (9:34&35):

﴿ يَأْتِيهَا الَّذِينَ ءَامَنُوا إِنَّ كَثِيرًا مِّنَ الْأَحْبَارِ وَالرُّهْبَانِ لِيَأْكُلُونَ أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَيَصُدُّونَ عَن سَبِيلِ اللَّهِ وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلَا ينفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ ﴿٣٤﴾ يَوْمَ يُحْمَىٰ عَلَيْهَا فِي نَارِ جَهَنَّمَ فَتُكْوَىٰ بِهَا جِبَاهُهُمْ وَجُنُوبُهُمْ وَظُهُورُهُمْ هَذَا مَا كَنَزْتُمْ لِأَنفُسِكُمْ فَذُوقُوا مَا كُنْتُمْ تَكْنِزُونَ ﴿٣٥﴾ ﴾

O you who have believed, indeed many of the scholars and the monks devour the wealth of people unjustly and avert [them] from the way of Allāh. And those who hoard gold and silver and spend it not in the way of Allāh - give them tidings of a painful punishment. The Day when it will be heated in the fire of Hell and seared therewith will be their foreheads, their flanks, and their backs, [it will be said], “This is what you hoarded for yourselves, so taste what you used to hoard.” ”

تنبيه: جهاد بالمال

NOTE: JIHĀD WITH THE WEALTH

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللهُ says in *Majmū' al-Fatāwā* (28/87), “And as for the one incapable of *Jihād* with his self (i.e. physical fighting), then waging *Jihād* with his wealth remains as an obligation upon him according to the correct opinion of the scholars. For indeed, Allāh’s command to wage *Jihād* with the wealth and self, is present in (much) more than one place in the Qur’ān, (and is also) coupled with His statement (64:16):

﴿فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ﴾

So fear Allāh as much as you are able

Also, the words of the Prophet ﷺ in *Ṣaḥīḥ al-Bukhārī*:

وَإِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأَتُوا مِنْهُ مَا اسْتَطَعْتُمْ

“If I command you with something, then do as much of it as you can”¹²²

Therefore, whoever is incapable of *Jihād* with his wealth is still required to participate with his self [and vice versa].”

He رَحِمَهُ اللهُ also says, in *al-Fatāwā al-Kubrā* (5/538), “And it is *Wājib* upon the one held back (from fighting) with a legitimate excuse, to sustain with their wealth the families of the (absent) fighters.”

¹²² *Ṣaḥīḥ al-Bukhārī: The Book of Holding Fast to the Qur’ān and the Sunnah* (7288), *Sunan ibn Mājah: The Book of the Sunnah* (2), and *Sunan an-Nasā’ī: The Book of Faith and its Signs* (5031)

Likewise, in *Majmū' al-Fatāwā* (28/586) he says, “As for the fighters who die, or are killed, then the upkeep of the fighters wife(s) and young children is upon the one who remains behind. According to ash-Shāfi'ī, Aḥmad, and others, the widow(s) should be provided for until she remarries, the daughters until they marry, and the boys until they attain the age of puberty...”

Another category worthy of mentioning as part of *Jihād* with the wealth is the obligation to free the Muslim POWs. Al-Qurṭubī رحمه الله states in his *Tafsīr* (3/245), “Freeing the Muslim POWs is mandatory, through either fighting or ransom. *Imām* Mālik says, ‘Muslims need to free the prisoners of war even if that would cost them all their wealth.’”

He also says in his commentary (4/411&412) on the verse (8:72) “If the believers who did not emigrate from the land of the enemy ask the Muslims for help, whether militarily or financially, to secure their release it is mandatory on the Muslims to help and prohibited to forsake them. The only exception is if the Muslims are bound by an agreement with the non-Muslim entity. However, this only holds (true) if the detained Muslims are not harmed. If oppressed, then the Muslims must help them. [*Imām* Abū Bakr] ibn al-‘Arabī says, ‘Except if the Muslims are oppressed. In that case, we need to secure their release, until not even a single eye amongst us blinks (i.e. even if we all die), or we exhaust all our wealth in the process.’”

Ibn an-Nuḥḥās رحمه الله says, “An-Nawawī considers that the ruling for freeing the prisoner is similar to the ruling when the enemy invades a Muslim land. In fact, he considers freeing the prisoner of war to be more of a priority because the sanctity of the Muslim soul is greater than that of the Muslim land.”¹²³

¹²³ *Mashāri' al-Ashwāq* (p.832)

﴿يَوْمَ يَجْمَعُكُمُ لِيَوْمِ الْجَمْعِ ذَلِكَ يَوْمُ التَّغَابُنِ وَمَنْ يُؤْمِنُ بِاللَّهِ وَيَعْمَلْ
صَالِحًا يُكْفِرْ عَنْهُ سَيِّئَاتِهِ وَيَدْخُلْهُ جَنَّتِ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ
خَالِدِينَ فِيهَا أَبَدًا ذَلِكَ الْفَوْزُ الْعَظِيمُ ﴿٩﴾ وَالَّذِينَ كَفَرُوا
وَكَذَّبُوا بِآيَاتِنَا أُولَٰئِكَ أَصْحَابُ النَّارِ خَالِدِينَ فِيهَا وَبِئْسَ
الْمَصِيرُ ﴿١٠﴾﴾

*O you who have believed, let not your wealth and your children divert you from remembrance of Allāh. And whoever does that - then those are the losers. And spend [in the way of Allāh] from what We have provided you before death approaches one of you and he says, “My Lord, if only You would delay me for a brief term so I would give charity and be among the righteous.”*¹²⁴

﴿هَٰأَنتُمْ هَٰؤُلَاءِ تُدْعَوْنَ لِتُنْفِقُوا فِي سَبِيلِ اللَّهِ فَمِنْكُمْ مَنْ يَبْخُلُ وَمَنْ
يَبْخُلْ فَإِنَّمَا يَبْخُلْ عَنِ نَفْسِهِ وَاللَّهُ الْغَنِيُّ وَأَنتُمُ الْفُقَرَاءُ وَإِن
تَوَلَّوْا يَسْتَبْدِلْ قَوْمًا غَيْرَكُمْ ثُمَّ لَا يَكُونُوا أَمْثَلَكُمْ ﴿٣٨﴾﴾

*Here you are - those invited to spend in the cause of Allāh - but among you are those who withhold [out of greed]. And whoever withholds only withholds [benefit] from himself; and Allāh is the Free of need, while you are the needy. And if you turn away [i.e., refuse], He will replace you with another people; then they will not be the likes of you.*¹²⁵

¹²⁴ Sūrah al-Munāfiqūn (63):9&10

¹²⁵ Sūrah Muḥammad (47):38

إذن الوالدين

PERMISSION OF THE PARENTS

It is not permissible to go out for *Jihād* without the permission of the parents, or the permission of one, if the other is a disbeliever, except if the *Jihād* becomes an individual obligation.

Ibn Rushd رَحِمَهُ اللَّهُ says in *Bidāyah al-Mujtahid* (2/144), “The majority of the jurists agree that from the conditions for this obligation - *Jihād* - is the permission of the parents, except if the *Jihād* is an individual obligation. Such as in the case wherein the need for *Jihād* is not met, except that everyone rises to discharge it.”

The basis for this condition is in the *Hadīth* narrated by ‘Abdullāh ibn ‘Amr رَضِيَ اللَّهُ عَنْهُمَا, collected by both al-Bukhārī and Muslim رَحِمَهُمَا اللَّهُ, in which he reports:

جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ، يَسْتَأْذِنُهُ فِي الْجِهَادِ فَقَالَ: أَحْيَى وَالِدَاكَ؟
قَالَ: نَعَمْ، قَالَ: فَفِيهِمَا فَجَاهِدْ

A man came to the Messenger of Allāh ﷺ asking his permission to go out for *Jihād*. The Messenger of Allāh asked him, “Are your parents alive?” He replied, “Yes.” The Messenger of Allāh then said to him, “Then your *Jihād* would be with them (i.e. in looking after them and being at their service).”¹²⁶

Therefore, this narration indicates dutifulness towards ones parents’ takes precedence over *Jihād*, due to the original state of

¹²⁶ *Ṣaḥīḥ al-Bukhārī: The Book of Virtue, Enjoining Good Manners, and Joining the Ties of Kinship* (2842), and *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (2549)

Jihād being a collective obligation, whilst being dutiful to the parents is an individual obligation.

As such, a man said to ibn ‘Abbās رَضِيَ اللَّهُ عَنْهُمَا:

إِنِّي نَذَرْتُ أَنْ أَغْزُو الرُّومَ، وَإِنَّ أَبَوَيَّ مَنَعَانِي، فَقَالَ: أَطِيعْ أَبَوَيْكَ فَإِنَّ
الرُّومَ سَتَجِدُ مَنْ يَغْزُوهَا غَيْرَكَ

“I have vowed to perform (offensive) *Jihād* against the romans, but my parents forbade me.” So he replied رَضِيَ اللَّهُ عَنْهُمَا, “Obey your parents. As for the romans, they will find others attacking them aside from you.”¹²⁷

However, if one or both of the parents are disbelievers the Shāfi’ī’s and Ḥanbalī’s view that it is permissible to wage *Jihād* without seeking their permission. This is because the Companions of the Prophet ﷺ used to wage *Jihād*, and from amongst them were those whose parents were disbelievers who did not give them permission. Among them was Abū Bakr aṣ-Ṣiddīq and Abū Ḥudhayfah رَضِيَ اللَّهُ عَنْهُمَا, whose father, ‘Utbah ibn Rabī’ah was one of the heads of the polytheists.

Although the Ḥanafī’s, ath-Thawrī رَضِيَ اللَّهُ عَنْهُ، and some of the Mālikī’s state that one should not go out for *Jihād* except with the permission of the parents, even if they are disbelievers, if the reason for them disliking one going out is due to fear and hardship. However, if their dislike stems from their aversion to their co-religionists being fought by the Muslims, then they should not be obeyed.

In summary, in spite of the dispute amongst the scholars regarding seeking the permission of the parents when the *Jihād* is a collective obligation, there is no disagreement regarding the sin

¹²⁷ Muṣṣanaḥ Ibn Abī Shaybah (33,459), and Marūzī, in *Birr wa’s-Silah*

of abandoning *Jihād* when it becomes an individual obligation, as it is in this era. For, as the Prophet ﷺ said,

لَا طَاعَةَ لِمَخْلُوقٍ فِي مَعْصِيَةِ الْخَالِقِ

There is no obedience to the creation when it involves disobedience to the Creator.

As such, al-Awzā'ī رحمه الله says, “That there is no obedience to the parents concerning leaving the obligations, such as the congregational prayer, *Hajj*, and fighting, because these are (all) individually obligatory forms of worship. Therefore there is no consideration given to seeking the permission of the parents, as in the case of praying (the five daily prayers).”¹²⁸

Additionally, *Imām Aḥmad* رحمه الله was asked about a man whose father prohibited him from the congregational prayer, and replied, “There is no obedience to him in the issue of (leaving) obligatory deeds.”¹²⁹

عدم الدين

ABSENCE OF DEBT

Ibn Qudāmah رحمه الله says in *al-Mughnī: Kitāb al-Jihād* (9/209), “It is not permissible for the one in debt to go out on a (military) expedition except with the permission of the lender, unless he leaves the debt (i.e. the value of the debt), a guarantor, or failing that, it is recorded in his will. This is (also) the stance of ash-Shāfi'ī.

¹²⁸ *Al-Mūsū'ah al-Fiqhiyah*, volume 16

¹²⁹ *Ghathā'a al-Bāb fī Sharḥ Mandhūmah al-Ādāb* (1/385)

Likewise, ibn Taymiyyah mentions a similar statement from *Imām Aḥmad* in *al-Mustadrak 'alā Majmū' al-Fatāwā* (3/217)

However, Mālik gave a concession for the one who is unable to repay his debt. Since he is unable to repay his debt, he should not be held back by it, and therefore is not prohibited from waging *Jihād*, in much the same way as if he did not have the debt in the first place.”¹³⁰

He then proceeds to mention the *Hadīth* in *Ṣaḥīḥ Muslim: The Book of Governance* (1885), when a man asked the Messenger of Allāh ﷺ:

يَا رَسُولَ اللَّهِ، أَرَأَيْتَ إِنْ قُتِلْتُ فِي سَبِيلِ اللَّهِ، تُكَفَّرَ عَنِّي خَطَايَايَ؟
فَقَالَ لَهُ رَسُولُ اللَّهِ ﷺ: نَعَمْ، إِنْ قُتِلْتَ فِي سَبِيلِ اللَّهِ، وَأَنْتَ صَابِرٌ
مُحْتَسِبٌ، مُقْبِلٌ غَيْرُ مُدْبِرٍ، ثُمَّ قَالَ رَسُولُ اللَّهِ ﷺ: كَيْفَ قُلْتَ؟ قَالَ:
أَرَأَيْتَ إِنْ قُتِلْتُ فِي سَبِيلِ اللَّهِ أَتُكَفَّرُ عَنِّي خَطَايَايَ؟ فَقَالَ رَسُولُ اللَّهِ
ﷺ: نَعَمْ، وَأَنْتَ صَابِرٌ مُحْتَسِبٌ، مُقْبِلٌ غَيْرُ مُدْبِرٍ، إِلَّا الدَّيْنَ، فَإِنَّ
جَبْرِيلَ عَلَيْهِ السَّلَامُ قَالَ لِي ذَلِكَ

“O Messenger of Allāh, do you think if I am killed in the way of Allāh, my sins will be wiped out?” The Messenger of Allāh replied, “Yes, if you are killed in the way of Allāh while being patient, sincere, and facing the enemy and not turning your back (i.e. fleeing from the enemy), all of your sins would be forgiven, except debt. Gabriel has told me this.”¹³¹

Al-Qurṭubī رَحِمَهُ اللَّهُ comments in his *Tafsīr*, “The debt that is intended here is when the Martyr had the capability of repaying it but did not, or had the option of writing it in his will nevertheless did not. It would also include money that was borrowed for a wasteful reason and was not returned. However, when the martyr borrows money due to poverty and dire need, and is then incapable of paying it back, this would not withhold the martyr

¹³⁰ *Al-Mughnī* (7435)

¹³¹ Also reported by al-Hākim and Aḥmad

from Paradise. In this case, the *Sultān* (i.e. the leader) should repay his debt. If that does not happen, then Allāh Himself will repay it for him. As the Messenger of Allāh said ﷺ,

مَنْ أَخَذَ أَمْوَالَ النَّاسِ يُرِيدُ أَدَاءَهَا أَدَّى اللَّهُ عَنْهُ، وَمَنْ أَخَذَ يُرِيدُ إِتْلَافَهَا أَتْلَفَهُ اللَّهُ

‘When you borrow and you sincerely want to pay it back, Allāh will pay it back for you. And when you borrow money to waste, Allāh will waste it.’^{132, 133}

Again, like the previous category, when *Jihād* becomes an individual obligation, the permission of the lender is not required, as is well known amongst the scholars. That being said,

¹³² *Ṣaḥīḥ al-Bukhārī: The Book of Loans, Payment of Loans, Freezing of Property, and Bankruptcy* (2387)

Al-Qurṭubī also mentions another narration from *Ṣaḥīḥ al-Bukhārī: The Book of Commentary of the Qur’ān* (4781):

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، عَنِ النَّبِيِّ ﷺ قَالَ: مَا مِنْ مُؤْمِنٍ إِلَّا وَأَنَا أَوْلَى النَّاسِ بِهِ فِي الدُّنْيَا وَالْآخِرَةِ، اقْرَءُوا إِن شِئْتُمْ: ﴿النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ﴾ [الأحزاب: 6] فَإَيُّمَا مُؤْمِنٍ تَرَكَ مَالًا فَلْيَرِثْهُ عَصَبَتُهُ مَنْ كَانُوا، فَإِنْ تَرَكَ دَيْنًا، أَوْ ضَيَاعًا فَلْيَأْتِنِي فَأَنَا مَوْلَاهُ

The Prophet said ﷺ, “There is no believer but I, of all the people, I am the closest to him both in this world and in the Hereafter. Recite if you wish: **The Prophet is closer to the believers than their own selves** (33:6). So if a believer (dies) leaves some property then his relatives will inherit that property; but if he is in debt or he leaves poor children, let those (creditors and children) come to me (that I may pay the debt and provide for the children), for them I am his sponsor (surely).”

This narration is also in *Ṣaḥīḥ Muslim: Book of the Rules of Inheritance* (1619), *Sunan Abī Dāwūd: Tribute, Spoils, and Rulership* (2954), and *Sunan ibn Mājah: Book of Charity* (2416)

¹³³ Also refer to *Mashārī’ al-Ashwāq*, (p.721) and *Mashari al-Ashwaq ila Masari al-Ushaaq* (English translation), (pgs.345&346)

the believer should, nevertheless, endeavour to repay his debts if he is able to,¹³⁴ as Allāh ﷻ says in *Sūrah al-Isrā'* (17:34):

﴿وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا﴾

And fulfil [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned.

Likewise, in *Sunan at-Tirmidhī: The Chapter on Judgements from the Messenger of Allāh ﷺ* (1352), the Prophet said ﷺ:

الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، إِلَّا صُلْحًا حَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا،
وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلَّا شَرْطًا حَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا

“The Muslims are bound by their covenants and stipulations, except those that forbid what is permissible, or permit what is forbidden.”

¹³⁴ Unless they were initially taken out for an impermissible purpose(s), such as for drugs, gambling, or insurance

CHAPTER SUMMARY

The conditions that make the obligation of *Jihād* binding upon an individual are: ¹³⁵

- 1) Islām
- 2) Sound state of mind
- 3) Maturity
- 4) Being male
- 5) Freedom
- 6) Ability
- 7) Permission of Parents
- 8) Absence of Debt

¹³⁵ It must be noted that conditions 5,7, and 8, are not considered in the case that the *Jihād* becomes an individual obligation

CHAPTER 8

هل يشترط إذن الإمام لوجوب الجهاد؟

IS THE PERMISSION OF THE RULER A (VALID) CONDITION FOR THE OBLIGATION OF JIHĀD?

Although originally part of the previous chapter, due to many of the misunderstandings surrounding this issue today, it was decided to address this condition separately.

Nevertheless, despite the misconceptions a number of contemporary *scholars* have advocated, none of the earlier scholars placed the permission of the ruler as a condition for the participation in (defensive) *Jihād*.

In *Fatāwā al-Kubrā* (5/538) *Shaykh al-Islām* ibn Taymiyyah رحمته الله says, “As for the defensive *Jihād*, then it is the most severe type of repelling the aggressor from the sanctities and the religion, therefore, and as such, is *Wājib* by consensus. Thus, **there are no conditions restricting its obligation**, and there is nothing more obligatory than repelling the aggressing enemy who corrupts both the religious and worldly (affairs). Rather, the repulsion is undertaken (each) according to his capability, and this has been stated by our companions from the scholars, and other than them...”

He also says (5/539), “... and indeed it is *Wājib* to march forth (to fight) without the permission of the parents or the lender, and there are explicit statements from Aḥmad (ibn Ḥanbal) to this effect.”

Likewise, in *al-Mughnī* (9/202) ibn Qudāmah رحمته الله states, “The responsibility of *Jihād* rests on the discretion of the *Imām* (i.e. leader of the Muslims). Thus his flock (i.e. the Muslims he is responsible for) should obey him in whatever his opinion is regarding this issue (of *Jihād*) [...]. However, if the *Imām* is absent the *Jihād* is not subject to delay, as its benefits will be lost with postponement. (In such an eventuality) if *Ghanīmah* is taken, it should be distributed in accordance with the *Sharī’ah*.”¹³⁶

He also says (9/202), “(And it is not permissible to attack the enemy without the permission of the *Amīr*) because he is the most knowledgeable of the affairs regarding warfare, and thus is ultimately responsible for its undertaking. Since it is not permissible for a fighter to engage in a duel except with his

¹³⁶ *Al-Mughnī* (7423)

Ibn an-Nuḥḥās comments in *Mashāri’ al-Ashwāq* (p.1042), “... If there is no *Imām* and the Muslims fight the enemy then they split the *Ghanīmah* among themselves. However [...] if there are women amongst the *Ghanīmah*, then they are not distributed unless there is an *Imām* in order to prevent harmful consequences.” (p.379 in the English abridgement)

permission, then the matter of staging an entire offensive operation supersedes this (in importance) [...]. Except if the enemy surprises (the Muslims) launching a sudden attack, like the disbelievers did when they raided the Prophet's ﷺ herd of camels and Salamah ibn al-Akwa' رَضِيَ اللَّهُ عَنْهُ happened to come across them. (He then proceeded to) pursue them out of Madīnah, engaging and harassing them without (seeking) permission. However, (instead of chiding him) the Prophet ﷺ praised him saying,

خَيْرُ رَجَالِنَا سَلَمَةُ بْنُ الْأَكْوَعِ

'The best of our infantrymen is Salamah ibn al-Akwa', and then proceeded to allot for him the share (of the spoils) of both an infantryman and a cavalryman."¹³⁷

While some scholars hold the opinion that permission should be sought in the case of offensive operations, the Shāfi'ī's, Dhāhirī's, others than them, and in a report from Aḥmad رَضِيَ اللَّهُ عَنْهُ, view that it is not necessary to seek the *Imām's* permission. Unless they specifically know that he dislikes that operations are undertaken without his, or his deputy's permission.

An-Nawawī رَضِيَ اللَّهُ عَنْهُ states in *Minhāj aṭ-Ṭālibīn* (p.137) that, "It is disliked (but not *Ḥarām*) to engage in offensive operations without the *Imām's*, or his deputy's permission."

Ibn an-Nuḥḥās رَضِيَ اللَّهُ عَنْهُ states in *Mashāri' al-Ashwāq* (p.1019), "Offensive *Jihād* without the permission of the *Imām* (Muslim leader) or whoever represents him is *Makrūh* (discouraged) but not *Ḥarām*. Nevertheless, there are exceptions to the discouragement:

- If *Jihād* is urgent and does not accept delay and seeking permission would cause (unacceptable) delay...

¹³⁷ *Al-Mughnī* (7438), and *Kashshāf al-Qinā'* (3/72&73)

- If the *Imām* neglects *Jihād*, and he and his soldiers are attached to this world. In that case, the permission of the *Imām* is not to be sought as he has suspended *Jihād*; the *Mujāhidīn* should therefore resume it.
- If the person cannot seek permission because he knows in advance the *Imām* would (unjustly) not give him permission.
- Ibn Qudāmah states that, "The absence of the *Imām* should not be a reason for the delay of *Jihād*." ¹³⁸

Imām ibn Ḥazm رَحِمَهُ اللَّهُ says, after quoting the verse (9:123), ¹³⁹ "It is not specified (only) upon the command of the *Imām*, or according to other than his command. Therefore, if the *Imām* was to prohibit fighting the *Ahl al-Ḥarb* (i.e. the disbelievers with no covenant), he should be disobeyed, as he has commanded disobedience (to Allāh); therefore, in that case there is no hearing and obeying owed to him. The Exalted has said (4:84):

﴿فَقَاتِلْ فِي سَبِيلِ اللَّهِ لَا تُكَلِّفُ الْإِنْفُسَ﴾

So fight, in the cause of Allāh; you are not held responsible except for yourself.

Thus, this address is directed at every Muslim, (with) everyone ordered with *Jihād* even if he does not have anyone with him. ¹⁴⁰

¹³⁸ *Mashari al-Ashwaq ila Masari al-Ushaaq [English translation]* (p.382)

Al-Khaṭṭāb ash-Shaybānī also makes a similar statement in *Mughnī al-Muḥtāj* (3/220)

¹³⁹ The verse (9:123) is:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ وَلْيَجِدُوا فِيكُمْ غِلَظَةً
وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ﴾

O you who have believed, fight those adjacent to you of the disbelievers and let them find in you harshness. And know that Allāh is with the righteous.

¹⁴⁰ *Al-Muḥallā* (5/421)

In *Durur as-Saniyyah* (8/199), Shaykh ‘Abd ar-Raḥmān ibn Ḥasan ibn Muḥammad ibn ‘Abd al-Waḥhāb رَحِمَهُمُ اللَّهُ says:

“With which book, and with which verse as evidence, is *Jihād* not an obligation except with an *Imām* to follow? This is from the biggest lies against the religion, and (the severest) abandonment of the path of the believers. The evidence indicating the falseness of such a claim is known by too many to even bother mentioning. Nevertheless, from it is the generality of the command(s) to perform *Jihād*, the encouragement to wage it, and the severe threat(s) for those who abandon it.

The Exalted said (2:251):

﴿وَلَوْلَا دَفْعُ اللَّهِ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَفَسَدَتِ الْأَرْضُ
وَلَكِنَّ اللَّهَ ذُو فَضْلٍ عَلَى الْعَالَمِينَ﴾ (٢٥١)

And if it were not for Allāh checking [some] people by means of others, the earth would have been corrupted, but Allāh is full of bounty to the worlds.

And He says in *Sūrah al-Hajj* (22:40):

﴿وَلَوْلَا دَفْعُ اللَّهِ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَهْجَمَتْ صَوَامِعُ وَبِيْعٌ
وَصَلَوَاتٌ وَمَسَاجِدُ يُذَكَّرُ فِيهَا اسْمُ اللَّهِ كَثِيرًا وَلَيَنْصُرَنَّ اللَّهُ مَنْ
يَنْصُرُهُ إِنَّ اللَّهَ لَقَوِيٌّ عَزِيزٌ﴾ (٢٠)

And were it not that Allāh checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allāh is much mentioned [i.e.,

praised]. And Allāh will surely support those who support Him [i.e., His cause]. Indeed, Allāh is Powerful and Exalted in Might.

So whoever arises to perform *Jihād* in the cause of Allāh, has indeed obeyed Allāh and discharged that which Allāh has obliged him with.”

From the evidences indicating the permissibility of this (i.e. waging *Jihād* without the permission of the ruler) is the story of Abū Baṣīr رَضِيَ اللَّهُ عَنْهُ recorded by al-Bukhārī رَضِيَ اللَّهُ عَنْهُ in his *Ṣaḥīḥ: The Book of Conditions* (2731), (and) narrated by Al-Miswar bin Makhramah and Marwan رَضِيَ اللَّهُ عَنْهُ (whose narrations attest each other):

... ثُمَّ رَجَعَ النَّبِيُّ ﷺ إِلَى الْمَدِينَةِ، فَجَاءَهُ أَبُو بَصِيرٍ رَجُلٌ مِنْ قُرَيْشٍ وَهُوَ مُسْلِمٌ، فَأَرْسَلُوا فِي طَلَبِهِ رَجُلَيْنِ، فَقَالُوا: الْعَهْدُ الَّذِي جَعَلْتَ لَنَا، فَدَفَعَهُ إِلَى الرَّجُلَيْنِ، فَخَرَجَا بِهِ حَتَّى بَلَّغَا ذَا الْحُلَيْفَةِ، فَنَزَلُوا يَأْكُلُونَ مِنْ تَمَرٍ لَهُمْ، فَقَالَ أَبُو بَصِيرٍ لِأَحَدِ الرَّجُلَيْنِ: وَاللَّهِ إِنِّي لَأَرَى سَيْفَكَ هَذَا يَا فَلَانُ جَيِّدًا، فَاسْتَلَّهُ الْآخَرُ، فَقَالَ: أَجَلٌ، وَاللَّهِ إِنَّهُ لَجَيِّدٌ، لَقَدْ جَرَّبْتُ بِهِ، ثُمَّ جَرَّبْتُ، فَقَالَ أَبُو بَصِيرٍ: أَرِنِي أَنْظُرُ إِلَيْهِ، فَأَمْكَنَهُ مِنْهُ، فَضَرَبَهُ حَتَّى بَرَدَ، وَفَرَّ الْآخَرُ حَتَّى أَتَى الْمَدِينَةَ، فَدَخَلَ الْمَسْجِدَ يَعْذُو، فَقَالَ رَسُولُ اللَّهِ ﷺ حِينَ رَأَاهُ: «لَقَدْ رَأَى هَذَا دُعْرًا» فَلَمَّا انْتَهَى إِلَى النَّبِيِّ ﷺ قَالَ: قُتِلَ وَاللَّهِ صَاحِبِي وَإِنِّي لَمَقْتُولٌ، فَجَاءَ أَبُو بَصِيرٍ فَقَالَ: يَا نَبِيَّ اللَّهِ، قَدْ وَاللَّهِ أَوْفَى اللَّهِ ذِمَّتَكَ، قَدْ رَدَدْتَنِي إِلَيْهِمْ، ثُمَّ أَنْجَانِي اللَّهُ مِنْهُمْ، قَالَ النَّبِيُّ ﷺ: «وَيْلُ أُمِّهِ مِسْعَرِ حَرْبٍ، لَوْ كَانَ لَهُ أَحَدٌ» فَلَمَّا سَمِعَ ذَلِكَ عَرَفَ أَنَّهُ سَيَرُدُّهُ إِلَيْهِمْ، فَخَرَجَ حَتَّى أَتَى سَيْفَ الْبَحْرِ قَالَ: وَيَنْفِلْتُ مِنْهُمْ أَبُو جَنْدَلِ بْنِ سُهَيْلٍ، فَلَحِقَ بِأَبِي بَصِيرٍ، فَجَعَلَ لَا يَخْرُجُ مِنْ قُرَيْشٍ رَجُلٌ قَدْ أَسْلَمَ إِلَّا لَحِقَ بِأَبِي بَصِيرٍ، حَتَّى اجْتَمَعَتْ مِنْهُمْ

عَصَابَةٌ، فَوَاللَّهِ مَا يَسْمَعُونَ بِعِيرٍ خَرَجَتْ لِقُرَيْشٍ إِلَى الشَّامِ إِلَّا اعْتَرَضُوا لَهَا، فَقَتَلُوهُمْ وَأَخَذُوا أَمْوَالَهُمْ، فَأَرْسَلَتْ قُرَيْشٌ إِلَى النَّبِيِّ ﷺ تَنَاشِدُهُ بِاللَّهِ وَالرَّحِمِ، لَمَّا أُرْسِلَ، فَمَنْ أَتَاهُ فَهُوَ آمِنٌ، فَأَرْسَلَ النَّبِيُّ ﷺ إِلَيْهِمْ، فَأَنْزَلَ اللَّهُ تَعَالَى: ﴿وَهُوَ الَّذِي كَفَّ أَيْدِيَهُمْ عَنْكُمْ وَأَيْدِيَكُمْ عَنْهُمْ بِبَطْنِ مَكَّةَ مِنْ بَعْدِ أَنْ أَظْفَرَكُمْ عَلَيْهِمْ﴾ [الفتح: 24] حَتَّى بَلَغَ ﴿الْحَمِيَّةَ حَمِيَّةَ الْجَاهِلِيَّةِ﴾ [الفتح: 26] وَكَانَتْ حَمِيَّتُهُمْ أَنَّهُمْ لَمْ يُقِرُّوا أَنَّهُ نَبِيُّ اللَّهِ، وَلَمْ يُقِرُّوا بِسَمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ، وَحَالُوا بَيْنَهُمْ وَيَنْ الْبَيْتِ ...

... When the Prophet ﷺ returned to Madīnah, Abū Baṣīr, a new Muslim convert from Quraysh came to him. The Infidels sent in his pursuit two men who said (to the Prophet ﷺ), “Abide by the promise you gave us.” Therefore, the Prophet ﷺ handed him over to them. They took him out (of the City) until they reached Dhul-Hulayfah where they dismounted to eat some dates they had with them. Abū Baṣīr said to one of them, “By Allāh, O so-and-so, I see you have a fine sword.” The other drew it out (of its scabbard) and said, “By Allāh, it is very fine and I have tried it many times.” Abū Baṣīr said, “Let me have a look at it.”

When the other gave it to him, he hit him with it until he died, and his companion ran away until reached Madīnah and entered the Mosque running. When Allah’s Messenger ﷺ saw him he said, “*This man appears to have been frightened.*” When he reached the Prophet ﷺ he said, “My companion has been murdered and I would have been murdered too.” Abū Baṣīr came and said, “O Messenger of Allāh, by Allāh, Allāh has fulfilled your obligations by your returning me to them (i.e. the Infidels), but Allāh has saved me from them.” The Prophet ﷺ

said, “Woe to his mother! What an excellent war kindler he would be, should he only have supporters.”¹⁴¹

When Abū Baṣīr heard that, he understood the Prophet ﷺ would return him to them, so he set off until he reached the seashore. Abū Jandal bin Suhayl got himself released from them (i.e. the infidels) and joined Abū Baṣīr. Therefore, whenever a man from Quraysh embraced Islām he would follow Abū Baṣīr until they formed a strong group. By Allāh, whenever they heard about a caravan of Quraysh heading towards *Shām*, they overtook it, attacked, killed them (i.e. infidels), and took their wealth.

The people of Quraysh sent a message to the Prophet requesting him for the Sake of Allāh and kith and kin to send for (Abū Baṣīr and his companions) promising that whoever (amongst them) came to the Prophet would be secure. Therefore, the Prophet ﷺ sent for them (i.e. Abū Baṣīr's companions) and Allāh revealed the following Divine Verses:

And it is He who withheld their hands from you and your hands from them within [the area of] Makkah after He caused you to overcome them. Until He informed them, When those who disbelieved had put into their hearts chauvinism - the chauvinism of the time of ignorance. (48:24-26) And their pride and haughtiness was that they did not confess (write in the treaty) that he (i.e. Muḥammad) was the Prophet of Allāh and refused to write, “***In the Name of Allah, the most Beneficent, the Most Merciful,***” and prevented the Muslims from visiting the Ka’bah...¹⁴²

Shaykh ‘Abd ar-Raḥmān ibn Ḥasan رحمه الله comments on the story saying, “So did the Messenger of Allāh say ﷺ, ‘You were

¹⁴¹ In *Faṭḥ al-Bārī* (5/350) ibn Hajar says, “His words ‘Woe to his mother’ are an apparently negative expression that the Arabs used to say but had praiseworthy connotations, thus it is not intended that the meaning included any censure.”

¹⁴² Also in *Sunan Abī Dāwūd: The Book of Jihād* (2765)

wrong in your war against the Quraysh, as you did not have an *Imām*? May Allāh be exalted! What greater harm is there to its people than ignorance? We seek Allāh's refuge from distorting the truth with ignorance and falsehood.”¹⁴³

A number of points of benefit can be divided from the story of Abū Baṣīr رضي الله عنه and those Companions with him, such as:

- He رضي الله عنه waged a relentless offensive campaign against the Quraysh's trade caravans without the Prophet's ﷺ permission.
- He رضي الله عنه was not bound by the terms of the Prophet's ﷺ treaty with the Quraysh (i.e. the treaty of Ḥudaybiyyah).
- He رضي الله عنه pursued the Quraysh wherever he could find them, regardless of where that was.
- He رضي الله عنه was not merely taking back the Muslims wealth that the Quraysh had wrongfully confiscated, as indicated by the words, *By Allāh, whenever they heard about a caravan of Quraysh heading towards Shām, they overtook it, attacked, killed them (i.e. infidels), and took their wealth.*
- Rather than censure him, the Companions understood that the Prophet's words ﷺ, “Woe to his mother! What an excellent war kindler he would be, should he only have supporters,” were an implicit indication that the Muslims detained in Makkah, should they manage to escape should join Abū Baṣīr's group رضي الله عنه. Therefore, ‘Umar رضي الله عنه would relay these words to the Muslims in Makkah as an encouragement for them to escape.¹⁴⁴

¹⁴³ *Durur as-Saniyyah* (8/201)

¹⁴⁴ Refer to *The Noble Life of the Prophet ﷺ* (3/1550-1556)

- Ibn Qudāmah رَحِمَهُ اللهُ rules in *al-Mughnī*, "... It is allowed for the ones who enter into Islām from the disbelievers, to withdraw to an area and kill those who they are able to from the *Kuffār* and to take their wealth. And they are not entered into the treaty (*Sulh*).”¹⁴⁵
- Despite the verse of *Sūrah at-Tawbah* (9:5):

﴿فَإِذَا أَسْلَحَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ
وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ إِن تَابُوا وَأَقَامُوا الصَّلَاةَ
وَأَتَوْا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ﴾

Kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place ambush. But if they should repent, establish prayer, and give zakāh, let them [go] on their way

... not yet having been revealed at that time, the Companions رَضِيَ اللهُ عَنْهُمْ nevertheless understood the true nature of *Jihād* and the relationship between the Muslims and hostile disbelievers.

Another event worthy of mention from the era of the Companions was that of al-Muthannah ash-Shaybānī's رَضِيَ اللهُ عَنْهُ guerrilla campaign against the Persian Empire along the borders of Iraq. Sometime after having begun this provocative campaign of raids, ambushes, and harassing operations against their military outposts and economic centres, he informed the Caliph of his progress. Not only did the Caliph Abū Bakr رَضِيَ اللهُ عَنْهُ approve of his actions, he went on to appoint al-Muthannah as commander-in-chief of the Islamic forces in the region. Although

¹⁴⁵ Refer to *Essay Regarding the Basic Rule of the Blood, Wealth, and Honour of the Disbelievers* (p.28)

he would later be replaced as leader by Khālīd رضي الله عنه, upon Abū Bakr's decision to launch a full-scale offense against the Persians, due to Khalid's exceptional military prowess, it was not reported that any of the Companions objected al-Muthannah's actions, despite them not being initiated with the Caliph's permission.

In conclusion, it must be assumed in accordance with the necessity of entertaining good assumptions about one's fellow believers. That those scholars who held that it is required to attain the permission of the ruler before undertaking any offensive operations against the enemy, were referring to those (past) rulers, who were men of *Jihād* and concern for the religion and its people. Accordingly, it would be improper to slander them by concluding they intended with their statements, the likes of today's traitors of the *Ummah*; Leaders that indeed wage *Jihād*, but not for the sake of Allāh ﷻ, but rather for their disbelieving masters who spare no expense to corrupt both the religious and worldly affairs in every way imaginable! And we seek Allāh's refuge from their evil.

Indeed, *Shaykh al-Islām* ibn Taymiyyah رحمته الله argued that from the conditions of the legitimacy of the ruler is that he must be a *Mujāhid*.¹⁴⁶ This is because, as he asserts in *Siyāsah ash-Shar'īyah* (p.66), "The most important matters in the religion are (the establishment of) the prayer and *Jihād*." While Shaykh 'Abd ar-Raḥmān ibn Ḥasan astutely رحمته الله asserts, "The *Imām* (and state) is not possible except through *Jihād*,"¹⁴⁷ and not the other way around!

In line with this, al-Māwardī says in *al-Aḥkām as-Sulṭāniyyah* (p.40), "There are ten matters regarding affairs of a public nature which are binding upon him (i.e. the ruler):

¹⁴⁶ Refer to *Majmū' al-Fatāwā*

¹⁴⁷ *Durur as-Saniyyah* (8/168)

- 1) He must guard the religion as it was established in its original form and about which the first generations of the *Ummah* are agreed...
- 3) He must protect the territory of Islām and defend its sanctuaries...
- 5) He must fortify the border posts against attack and defend them with force against an enemy that might appear unexpectedly and violate what is sacred, or shed the blood of Muslims or *Dhimmī's* protected by a pact.
- 6) He must wage *Jihād* against those who resist Islām after having been called to it, until they submit or accept to live as a protected *Dhimmī* community - so that Allāh's rights, May He be exalted, ***be made manifest above all (other) religions... (9:33).***¹⁴⁸

¹⁴⁸ p.28 in the English Translation of *al-Aḥkām as-Sulṭāniyyah*

CHAPTER SUMMARY

The scholars differed over whether the permission of the ruler is required for offensive *Jihād*. Their opinions are as follows:

- It is required, and is *Ḥarām* to conduct operations without permission
- It is *Makrūh* (disliked) to conduct operations without permission, but not *Ḥarām*
- It is not required

As for defensive *Jihād*, none of the *Salaf*, or classical scholars held the permission of the *Imām*, or anyone else for that matter, was necessary. Rather, they relied upon the verse in *Sūrah an-Nisā'* (4:84):

﴿فَقَاتِلْ فِي سَبِيلِ اللَّهِ لَا تُكَلَّفُ إِلَّا نَفْسَكَ وَحَرِّضِ الْمُؤْمِنِينَ عَسَى اللَّهُ أَنْ يَكْفِ بِأَسِ الَّذِينَ كَفَرُوا وَاللَّهُ أَشَدُّ بِأَسًا وَأَشَدُّ تَنْكِيلًا﴾

So fight in the cause of Allāh - you are not held responsible except for yourself. And encourage the believers [to join you] that perhaps Allāh will restrain the [military] might of those who disbelieve. And Allāh is greater in might and stronger in [exemplary] punishment.

CHAPTER 9

الحكمة والغاية من مشروعية

الجهاد

THE WISDOM AND PURPOSE BEHIND JIHĀD IN THE CAUSE OF ALLĀH

Jihād in the cause of Allāh ﷻ is from the greatest deeds a slave can practice to worship his Lord. In addition, it is a fundamental component in the obligations of enjoining good and forbidding evil, the propagation of *Tawḥīd* amongst humanity, and the removal of whatever opposes it from *Shirk* and disbelief.

As such, the primary purposes behind the legislation of *Jihād* are:

إِعْلَاءُ كَلِمَةِ اللَّهِ وَأَنْ يَكُونَ الدِّينُ كُلُّهُ لِلَّهِ

**RAISING THE WORD OF ALLĀH TO THE
UPPERMOST, AND THAT THE RELIGION IN
ITS ENTIRETY IS FOR ALLĀH ALONE**

In *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (2810), and *Ṣaḥīḥ Muslim: The Book on Governance* (1904), Abū Mūsā al-‘Asharī رَضِيَ اللَّهُ عَنْهُ narrates that a man came to the Prophet ﷺ and asked, “A man fights for *Ghanīmah*, another fights for fame, while another fights to show off - which one of them fights in Allāh’s cause?” The Prophet ﷺ replied,

مَنْ قَاتَلَ لِتَكُونَ كَلِمَةُ اللَّهِ هِيَ الْعُلْيَا فَهُوَ فِي سَبِيلِ اللَّهِ

“He who fights in order that the word of Allāh is exalted fights in the way of Allāh.”¹⁴⁹

This understanding is also evident in the exchange between Rabī’ ibn ‘Āmir رَضِيَ اللَّهُ عَنْهُ and the Persian general Rustam, on the eve of the battle of Qādisiyah, when Rustam asked,

“What have you come for?” Rabī’ replied, “Allāh sent us to save people from worshipping each other, to worshipping Allāh (alone); and from the constraints and narrowness of this world to the vastness of the Hereafter; from the oppression of religions to the justice of Islām. Therefore, He sent us to His creation to call them to His religion. Whoever accepts this; we accept it from him and leave him alone. As for whoever refuses; we will not cease fighting him until Allāh’s appointment.”

¹⁴⁹ Similar narrations are also recorded in *Jāmi’ at-Tirmidhī: The Book on Virtues of Jihād* (1646), *Sunan an-Nasā’ī: The Book of Jihād* (3136), and *Sunan ibn Mājah: The Book of Jihād* (2783),

“And what is that?” inquired Rustam. Whereupon Rabī’ replied, “Paradise for whoever dies fighting those who refuse (Islām), and victory for those who remain.”¹⁵⁰

Likewise, whenever the Prophet ﷺ would dispatch a military detachment, he would advise their leader:

وَإِذَا لَقِيتَ عَدُوَّكَ مِنَ الْمُشْرِكِينَ، فَادْعُهُمْ إِلَى ثَلَاثِ خِصَالٍ - أَوْ خِلَالٍ - فَأَيُّهُنَّ مَا أَجَابُوكَ فَأَقْبِلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى الْإِسْلَامِ، فَإِنْ أَجَابُوكَ، فَأَقْبِلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ

“[...] When you meet your enemies from the polytheists, invite them to three courses of action. If they respond to any one of these, accept it from them and restrain from (fighting) them:

Invite them to Islām, if they respond to you (favourably), accept it from them and desist from fighting them [...]”¹⁵¹

With regards to waging *Jihād* to make the religion in its entirety solely for Allāh, He ﷻ says in *Sūrah al-Anfāl* (8:39):

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ﴾

And fight them until there is no fitnah and [until] the religion, all of it, is for Allāh

Ibn Kathīr رَحِمَهُ اللَّهُ says in his *Tafsīr* of the verse (2:193), “Allāh then commanded fighting the disbelievers when He said, **...until there is no more Fitnah** meaning, *Shirk*.

This is the opinion of ibn ‘Abbās, Abū al-‘Āliyah, Mujāhid, al-Ḥasan, Qatādah, ar-Rabī’, Muqātil ibn Ḥayyān, as-Suddī and Zayd ibn Aslam.

¹⁵⁰ *Al-Bidāyah wa 'n-Nihāyah* (5/286)

¹⁵¹ *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1731)

Allah’s statement **...and the religion (all and every kind of worship) is for Allah (Alone)**, means, ‘So that the religion of Allah becomes dominant above all other religions.’”¹⁵²

He also says, in his commentary of the verse (2:191), “Since *Jihād* involves killing and shedding the blood of men, Allāh indicated that these men are committing disbelief in Allāh, associating with Him (in the worship) and hindering from His path, and this is a much greater evil and more disastrous than killing. Abū Mālik commented about what Allāh said, **And al-Fitnah is worse than killing**. “Meaning, what you (disbelievers) are committing is much worse than killing.”

Abū al-‘Āliyah, Mujāhid, Sa’īd bin Jubayr, ‘Ikrimah, al-Ḥasan, Qatādah, ad-Daḥḥak, and ar-Rabī’ ibn Anas said that what Allāh said, **And al-Fitnah is worse than killing**. “*Shirk* (polytheism) is worse than killing.”¹⁵³

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللهُ summarizes the primary purpose of *Jihād* when he says, in *as-Siyāsah ash-Shar’iyyah* (p.359), “The goal of *Jihād* is that the word of Allāh be raised to the uppermost, and the religion in its entirety is for Allāh alone...”¹⁵⁴ He also says, “Indeed, it is *Wājib* upon us to sacrifice our blood and wealth until the word of Allāh is raised to the uppermost.”¹⁵⁵

¹⁵² *Tafsīr ibn Kathīr (Abridged)* (4/314)

¹⁵³ *Tafsīr ibn Kathīr (Abridged)* (1/528&529)

¹⁵⁴ Also in *Majmū’ al-Fatāwā* (15/170)

¹⁵⁵ *Tafsīr Shaykh al-Islām ibn Taymiyyah* (3/312)

Secondly,

نصر المظلّمين AIDING THE OPPRESSED

Another of *Jihād's* purposes is the aiding of the weak that are unable to find a way out of their oppressed circumstances, finding none to liberate them from amongst Allāh's creation.

Regarding these people, Allāh ﷻ says in *Sūrah an-Nisā'* (4:75):

﴿وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ
وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا
وَلَجَعَلْنَا مِنْ لَدُنْكَ وَلِيًّا وَلَجَعَلْنَا مِنْ لَدُنْكَ نَصِيرًا﴾

And what is [the matter] with you that you fight not in the cause of Allāh and [for] the oppressed among men, women, and children who say, “Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper?”

Aṭ-Ṭabarī رحمه الله says that the meaning of the verse is, “And what is the matter with you that you do not fight for the sake of Allāh. While from your religion there are weak men, women, and children who have been downtrodden and humiliated by the disbelievers in an attempt to force them to abandon your religion (i.e. Islām).”¹⁵⁶

¹⁵⁶ *Jāmi' al-Bayān Ta'wīl al-Qur'ān* (4/19&20)

And **thirdly**,

رَدُّ الْعَدْوَانِ وَحِفْظُ الْإِسْلَامِ

REPELLING AGGRESSION AND DEFENDING ISLĀM

Allāh ﷻ says in *Sūrah al-Baqarah* (2:194):

﴿الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ
فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ
الْمُتَّقِينَ﴾ (١٩٤)

[Fighting in] the sacred month is for [aggression committed in] the sacred month, and for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you. And fear Allāh and know that Allāh is with those who fear Him.

And in *Sūrah al-Hajj* (22:39&40):

﴿أُذِنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ﴾ (٣٩) ﴿الَّذِينَ
أَخْرَجُوا مِن دِيَارِهِم بِغَيْرِ حَقٍّ إِلَّا أَنْ يَقُولُوا رَبُّنَا اللَّهُ وَلَوْلَا دَفْعُ
اللَّهِ النَّاسَ بَعْضَهُم بِبَعْضٍ لَّهَدَمَتْ صَوَامِعُ وَبِيَعٌ وَصَلَوَاتٌ
وَمَسَاجِدُ يُذَكِّرُ فِيهَا أَسْمُ اللَّهِ كَثِيرًا وَلَيَنْصُرَنَّ اللَّهُ مَن
يَنْصُرُهُ إِنَّ اللَّهَ لَقَوِيٌّ عَزِيزٌ﴾ (٤٠)

Permission [to fight] has been given to those who are being fought, because they were wronged. And indeed, Allāh is competent to give them victory.

[They are] those who have been evicted from their homes without right – only because they say, “Our Lord is Allāh.” And were it not that Allāh checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allāh is much mentioned [i.e., praised]. And Allāh will surely support those who support Him [i.e., His cause]. Indeed, Allāh is Powerful and Exalted in Might.

Also, in *Sūrah al-Baqarah* (2:251):

﴿وَلَوْلَا دَفْعُ اللَّهِ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَفَسَدَتِ الْأَرْضُ
وَلَكِنَّ اللَّهَ ذُو فَضْلٍ عَلَى الْعَالَمِينَ﴾ (٢٥١)

And if it were not for Allāh checking [some] people by means of others, the earth would have been corrupted, but Allāh is full of bounty to the worlds.

CHAPTER SUMMARY

The primary reasons for Allāh's legislation of *Jihād* in the cause of Allāh ﷻ are:

- 1) Raising the word of Allāh ﷻ to the uppermost, and that the religion is solely for Allāh ﷻ
- 2) Aiding the weak and oppressed
- 3) Repelling aggression and protecting Islām

CHAPTER 10

الأصناف الذين يقاتلون

THE CATEGORIES OF PEOPLE FOUGHT (FOR THE SAKE OF ALLĀH)

For the overall benefit of the creation, the *Sharī'ah* permits, nay even obliges at times, fighting particular groups of people. Regarding this, *Shaykh al-Islām* ibn Taymiyyah رَحِمَهُ اللَّهُ says in *Majmū' al-Fatāwā* (28/355), “Allāh, the Exalted, has permitted killing those necessary for the rectification of the creation. As such, He said:

﴿وَالْفِتْنَةُ أَكْبَرُ مِنَ الْقَتْلِ﴾

And fitnah is greater than killing.”¹⁵⁷

¹⁵⁷ *Sūrah al-Baqarah* (2):217. Also in *as-Siyāsah ash-Shar'iyyah* (p.350)

The first among the aforementioned categories is:

الْكُفَّار

THE DISBELIEVERS

The disbelievers can be divided into two categories:

- *Al-Ḥarbiyūn*: those at war with the Muslims
- *Al-Mu'āhadūn*: those possessing a valid covenant of security or peace treaty with the Muslims

The *Ḥarbiyūn* are those whom it is permissible, and at times obligatory, to fight from amongst the disbelievers. While the *Mu'āhadūn* are those whose lives and wealth is protected by the *Sharī'ah*, and who will be discussed further in *Chapter 19: Rulings Regarding Covenants of Security*, if Allāh wills.¹⁵⁸

There does not have to be on-going hostilities with the disbelievers for them to fall within the category of *Ḥarbiyūn*. Rather, the absence of a valid treaty or covenant with the Muslims places them then within this category. Accordingly, it is the default state of the disbelievers.¹⁵⁹

¹⁵⁸ Refer to *Tawḥīd wa'l-Qitāl*, (pp.30-42), and *Essay Regarding the Basic Rule of the Blood, Wealth and Honour of the Disbelievers* for more details on this subject

¹⁵⁹ It is important for the believer, and *Mujāhid* in particular, to be well-versed with these categories of disbelievers due to the *Ḥadīth* in which the Prophet ﷺ warned this *Ummah* recorded in *Ṣaḥīḥ Muslim: the Book of Jihād and Expeditions* (1735), wherein he ﷺ said:

إِذَا جَمَعَ اللَّهُ الْأَوَّلِينَ وَالْآخِرِينَ يَوْمَ الْقِيَامَةِ، يُرْفَعُ لِكُلِّ غَادِرٍ لَوَاءٌ، فَقِيلَ: هَذِهِ غَدْرَةُ فُلَانٍ بِنِ فُلَانٍ

“When Allāh will gather together, on the Day of Judgement, all the earlier and later generations. A flag will be raised (to mark off) every person guilty of

الْحَرَبِيُّونَ AL-ḤARBIYŪN

The *Ḥarbiyūn* can be divided into three sub-categories:

The **first** are *Ahl al-Kitāb* (the people of the Book), and they are the Jews and the Christians. They are fought until they either accept Islām, or remain upon their religions but submit to paying the *Jizyah* in a state of humiliation.

Allāh ﷻ says in *Sūrah at-Tawbah* (9:29):

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾¹⁶⁰

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islām] from those who were given the Scripture - [fight] until they give the jizyah willingly while they are humiliated.¹⁶⁰

a breach of faith, and it will be announced that this is the perfidy of so and so, son of so and so (to attract the attention of the people to his guilt)."

and in *Sunan an-Nasā'ī* (4747) he ﷺ said,

مَنْ قَتَلَ مُعَاهِدًا فِي غَيْرِ كُنْهٍ حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ

"If anyone kills a 'Mu'āhid' (i.e. a person guaranteed protection) without justification, Allāh will prevent him from Paradise."

¹⁶⁰ Ibn Kathīr says in his *Tafsīr* on the verse, "Allāh said, **until they pay the Jizyah**, if they do not choose to embrace Islām, **with willing submission**, in

The **second** are those similar to the *Ahl al-Kitāb* (whom it is suspected once received a divine book); and they are the Zoroastrians. Concerning accepting the *Jizyah*, essentially their ruling is the same as that of the *Ahl al-Kitāb*.¹⁶¹ This is due to a *Hadīth* collected by al-Bukhārī رَحِمَهُ اللَّهُ in his *Ṣaḥīḥ: Book of Jizyah* (3156&3157):

وَلَمْ يَكُنْ عُمَرُ أَخَذَ الْجِزْيَةَ مِنَ الْمَجُوسِ، حَتَّى شَهِدَ عَبْدُ الرَّحْمَنِ بْنُ
عَوْفٍ أَنَّ رَسُولَ اللَّهِ ﷺ أَخَذَهَا مِنْ مَجُوسِ هَجَرَ

“[...] ‘Umar did not take the *Jizyah* from the Magian infidels until ‘Abd ar-Raḥmān ibn ‘Awf testified that Allāh’s Messenger ﷺ had taken the *Jizyah* from the Magians of Hajar.”¹⁶²

Additionally, in *al-Muwatta’*: *The Book of Zakāh* (619), Imām Mālik رَحِمَهُ اللَّهُ reports:

أَنَّ عُمَرَ بْنَ الْخَطَّابِ ذَكَرَ الْمَجُوسَ فَقَالَ: مَا أَدْرِي كَيْفَ أَصْنَعُ فِي
أَمْرِهِمْ؟ فَقَالَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: أَشْهَدُ لَسَمِعْتُ رَسُولَ اللَّهِ ﷺ
يَقُولُ سُنُّوا بِهِمْ سُنَّةَ أَهْلِ الْكِتَابِ

defeat and subservience, *and feel themselves subdued*, disgraced, humiliated and belittled. Therefore, Muslims are not allowed to honour the people of *Dhimma* or elevate them above Muslims, for they are miserable, disgraced and humiliated. Muslim recorded from Abū Hurayrah that the Prophet ﷺ said, “Do not initiate the *Salām* to the Jews and Christians, and if you meet any of them in a road, force them to its narrowest part.” This is why the Leader of the faithful ‘Umar ibn al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ demanded his well-known conditions be met by the Christians, these conditions that ensured their continued humiliation, degradation and disgrace. (The text of the letter will be included in the Appendix - if Allāh wills)

¹⁶¹ However, they do not share their ruling for matters such as marriage and the permissibility of consuming their slaughter, and as such, a Muslim cannot marry a Magian woman, neither is their meat *Ḥalāl* for Muslims to eat

¹⁶² Also in *Sunan Abī Dāwūd: The Book of Tribute, Spoils, and Leadership* (3043)

[...] ‘Umar ibn al-Khaṭṭāb mentioned the Magians and said, “I do not know what to do about them.” ‘Abd ar-Raḥmān ibn ‘Awf said, “I bear witness that I heard the Messenger of Allāh ﷺ say, ‘Deal with them in the same fashion as you deal with the People of the Book.’”¹⁶³

Imām ibn Qayyim رحمه الله said in *Aḥkām Ahl adh-Dhimmaḥ* (1/79&80), “The jurists have a consensus on the permissibility of taking the *Jizyah* from the *Ahl al-Kitāb* and the Magians.”

The **third** group are those who do not have a (divinely revealed) book, neither do they appear to have ever followed one. In this category fall the polytheists, and all the other types of disbelievers that do not fall within the two previously mentioned categories. The scholars have differed over whether or not to accept the *Jizyah* from them.

The Ḥanafī’s hold that the *Jizyah* should not be accepted from the Arab polytheists, who are given only two options; Islām or the sword. However, the *Jizyah* is accepted from the Arab *Ahl al-Kitāb*, and all other non-Arab disbelievers.¹⁶⁴

The Mālikī’s have four opinions regarding this category of disbelievers:

- 1) Accept the *Jizyah* from the *Ahl al-Kitāb*, whether they be Arab or non-Arab
- 2) Ibn al-Qāsim رحمه الله holds, “If the (other) disbelieving nations are content to pay the *Jizyah*, then accept it from them”
- 3) Ibn Mājushūn رحمه الله says, “It should not be accepted”
- 4) Ibn Wahb رحمه الله holds, “Do not accept (the *Jizyah*) from the Arab Magians, but accept it from (all) other than them.”

¹⁶³ Also in *Musnad ash-Shāfi’ī* (1/209), and *al-Umm* (4/173). Al-Albānī considered the narration weak in *Irwa’ al-Ghalīl* (1248)

¹⁶⁴ Refer to *Bidāyah al-Mujtahid* (2/166)

As for those who maintain that the *Jizyah* may be taken from every community of disbelievers. They rely upon the *Hadīth* in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1731) from Sulaymān ibn Buraydah, from his father رضي الله عنه, who says that when the Messenger of Allāh appointed a leader of a detachment he ﷺ would exhort him to fear Allāh and to be good to the Muslims who were with him. He ﷺ would say:

اغْزُوا بِاسْمِ اللَّهِ فِي سَبِيلِ اللَّهِ، قَاتِلُوا مَنْ كَفَرَ بِاللَّهِ، اغْزُوا وَلَا تَغْلُوا، وَلَا تَغْدِرُوا، وَلَا تَمْثُلُوا، وَلَا تَقْتُلُوا وَلِيدًا، وَإِذَا لَقِيتَ عَدُوَّكَ مِنْ **الْمُشْرِكِينَ**، فَادْعُهُمْ إِلَى ثَلَاثِ خِصَالٍ - أَوْ خِلَالٍ - فَأَيُّهُنَّ مَا أَجَابُوكَ فَاقْبَلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى الْإِسْلَامِ، فَإِنْ أَجَابُوكَ، فَاقْبَلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى التَّحَوُّلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ، وَأَخْبِرْهُمْ أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلْمُهَاجِرِينَ، وَعَلَيْهِمْ مَا عَلَى الْمُهَاجِرِينَ، فَإِنْ أَبَوْا أَنْ يَتَحَوَّلُوا مِنْهَا، فَأَخْبِرْهُمْ أَنَّهُمْ يَكُونُونَ كَأَعْرَابِ الْمُسْلِمِينَ، يَجْرِي عَلَيْهِمْ حُكْمُ اللَّهِ الَّذِي يَجْرِي عَلَى الْمُؤْمِنِينَ، وَلَا يَكُونُ لَهُمْ فِي الْغَنِيمَةِ وَالْفَيْءِ شَيْءٌ إِلَّا أَنْ يُجَاهِدُوا مَعَ الْمُسْلِمِينَ، فَإِنْ هُمْ أَبَوْا فَسَلِّهُمْ الْجَزْيَةَ، فَإِنْ هُمْ أَجَابُوكَ فَاقْبَلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، فَإِنْ هُمْ أَبَوْا فَاسْتَعِنَ بِاللَّهِ وَقَاتِلْهُمْ ...

“Fight in the name of Allāh, for the sake of Allāh. Fight whoever disbelieves in Allah. Do not embezzle the spoils; do not break your pledge; do not mutilate (the dead) bodies, and do not kill children.

*When you meet your enemies **from the Mushrikīn (polytheists)**, invite them to three courses of action. If they respond to any one of these, accept it from them and refrain from (fighting) them:*

Invite them to Islām, if they respond to you (favourably), accept it from them and desist from fighting them. Then invite them to migrate from their lands to the lands of the Muhājirīn

(emigrants) and inform them that if they do that, they shall have all of the privileges and responsibilities of the Muhājirīn. If they refuse to migrate, tell them that they will have the status of the Bedouin Muslims and will be subject to the commands of Allāh like other Muslims, but will have no share in the spoils of war or the Fay', except if they participate in the fight.

If they refuse to accept Islām, demand from them the Jizyah. If they agree to pay, accept it from them and refrain (from fighting them). If they refuse to pay the Jizyah, seek Allāh's help and fight them [...]"¹⁶⁵

The Shāfi'ī position is, "It is not permissible to take the Jizyah from anyone, like the idolaters, who does not have a (divinely revealed) book or resemble those who have a book due to the words of Allāh:

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾^{٢٩}

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islām] from those who were given the Scripture - [fight] until they give the jizyah willingly while they are humiliated.¹⁶⁶

Here, the People of the Book were mentioned specifically regarding the acceptance of the Jizyah. As such, this indicates that it is not permissible to accept it from other than them - the

¹⁶⁵ Also in *Sunan ibn Mājah: The Book of Jihād* (2967)

¹⁶⁶ *Sūrah at-Tawbah* (9):29

Jews and the Christians. (However,) it is permissible to take it from those who changed their religions, because even though they themselves are not applicable for it, their fathers were. It is (also) permissible to accept it from the Magians.”¹⁶⁷

The Ḥanbalī’s say, “Do not accept the *Jizyah* except from a Jew, Christian, or a Magian. As for everyone else, do not accept it from them, neither except anything else from them except Islām. If they do not accept Islām, then kill them.”

Ibn Qudāmah رَحِمَهُ اللهُ says in *al-Mughnī* (9/333), “It is apparent that this is the opinion of Aḥmad. Although, al-Ḥasan ibn Thawāb narrates from him that (his opinion) is to accept (the *Jizyah*) from every disbeliever, except the idol worshipers from amongst the Arabs. The *Ḥadīth* of Buraydah رَضِيَ اللهُ عَنْهُ is a general evidence for accepting the *Jizyah* from every disbeliever, although he (Aḥmad) excludes the idol worshipers from amongst the Arabs due to the severity of their disbelief.”

Al-Qurṭubī رَحِمَهُ اللهُ says in his *Tafsīr* (4/435), “... The scholars have consensus that the *Jizyah* is only imposed upon the adult free men, (as) they are the ones that fight; as opposed to women, children, slaves, the insane, those mentally impaired, and the decrepit. However, they differed with regards to the monk...” He also says (4/437), “... Whoever is unable to pay the *Jizyah* (due to poverty) is exempted, and the wealthy are not expected to pay on behalf of the poor.” He then quotes the following narration recorded in *Sunan Abī Dāwūd: Tribute, Spoils, and Rulership* (3052), wherein the Prophet ﷺ said:

أَلَا مَنْ ظَلَمَ مُعَاهِدًا أَوْ انْتَقَصَهُ أَوْ كَلَّفَهُ فَوْقَ طَاقَتِهِ أَوْ أَخَذَ مِنْهُ شَيْئًا بَغَيْرِ
طَيِّبِ نَفْسٍ فَأَنَا حَاجِبُهُ يَوْمَ الْقِيَامَةِ

¹⁶⁷ *Al-Madhhab* (2/250), *Mukhtaṣar Khilāfiyāt al-Bayhaqī* (5/59), *al-Ḥawī al-Kabīr* (14/153)

“Beware, if anyone wrongs a person having a covenant (with the Muslims), diminishes his right, forces him with something beyond his capability, or takes from him anything without consent, (then) I shall plead for him on the Day of Judgement.”¹⁶⁸

سبب الاختلاف بين العلماء

REASON FOR DIFFERENCES BETWEEN THE SCHOLARS

The principal reason for the differences of opinion amongst the scholars is due to some from them basing their rulings on the general texts, while others have done so according to those texts specifying the general ruling.¹⁶⁹

As for the texts that contain the general ruling, they are the likes of the noble verses:

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ﴾

*And fight them until there is no fitnah and [until] the religion, all of it, is for Allāh*¹⁷⁰

¹⁶⁸ Declared Ṣaḥīḥ by al-Albānī

¹⁶⁹ Refer to *An Introduction to the Sciences of the Qur'aan*, (pgs.228&229), and *The Foundations of the Knowledge of Usul* (pp.44-59), for a discussion on the subject of the *General* (العام) and the *Specific* (الخاص) texts

¹⁷⁰ *Sūrah al-Anfāl* (8):39

And:

﴿فَإِذَا أَسْلَخَ الْأَشْهُرَ الْحُرُمَ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ
وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ إِن تَابُوا وَأَقَامُوا
الصَّلَاةَ وَآتَوْا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ إِنَّ اللَّهَ عَفُورٌ رَحِيمٌ﴾

And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakāh, let them [go] on their way. Indeed, Allāh is Forgiving and Merciful. ¹⁷¹

Also, the statement of the Messenger of Allāh ﷺ:

أُمِرْتُ أَنْ أَقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا
رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ، عَصَمُوا
مِنِّي دِمَاءَهُمْ، وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا، وَحِسَابُهُمْ عَلَى اللَّهِ

“I have been ordered to fight against the people until they testify that there is no deity worthy of worship except Allāh and that Muḥammad is the Messenger of Allāh, establish the prayer and give the zakāh. Then, if they do that, their blood and wealth will be protected from me – except in accordance with the right of Islām. And their reckoning will be with Allāh, the Exalted.” ¹⁷²

¹⁷¹ Sūrah at-Tawbah (9):5

¹⁷² Ṣaḥīḥ al-Bukhārī: the Book of Faith (25), Ṣaḥīḥ Muslim: the Book of Faith (22), Jāmi’ at-Tirmidhī: the Book of Faith (2608), Sunan an-Nasā’ī: the Book of Jihād (3090), Sunan Abī Dāwūd: the Book of Jihād (2642), Sunan Ibn Mājah: the Book of the Sunnah (75), Musnad Aḥmad, al-Bayhaqī, Ibn Ḥibbān, al-Darqutnī, and Muwaṭṭa’ Imām Mālik.

As for the texts that specify the general ruling, they are found in the *Hadīth* of Buraydah رَضِيَ اللَّهُ عَنْهُ, and in a similar narration with a different wording:

إِذَا لَقِيتُمْ عَدُوَّكَ مِنَ الْمُشْرِكِينَ فَادْعُهُمْ إِلَى إِحْدَى خِصَالٍ ثَلَاثٍ،
فَادْعُهُمْ إِلَى الْإِسْلَامِ، فَإِنْ أَجَابُوكَ فَاقْبَلْ وَكُفَّ عَنْهُمْ، فَإِنْ أَبَوْا فَادْعُهُمْ
إِلَى إِعْطَاءِ الْجِزْيَةِ، فَإِنْ أَجَابُوكَ فَاقْبَلْ وَكُفَّ عَنْهُمْ، فَإِنْ أَبَوْا فَاسْتَعِزْ
بِاللَّهِ وَقَاتِلْهُمْ

“... When you meet your enemy from the *Mushrikīn*, call them to *Islām*, and if they answer (positively) then accept it from them. If they refuse, then level upon them the *Jizyah*. If they refuse, then seek *Allāh*'s help and fight them...”

Thus, those who adopt the opinion that the *Hadīth* of Buraydah رَضِيَ اللَّهُ عَنْهُ takes specifies the general texts, hold that the *Jizyah* may be accepted from every disbeliever, as the Prophet ﷺ was dispatching his companions towards the pagan Arabs, indicated by his words ﷺ:

وَإِذَا لَقِيتَ عَدُوَّكَ مِنَ الْمُشْرِكِينَ، فَادْعُهُمْ إِلَى ثَلَاثِ خِصَالٍ

“When you meet your enemies from the polytheists, invite them to three courses of action.”

However, those maintaining that the general texts, those that mention fighting the polytheists collectively, making no mention of accepting the *Jizyah* from them, take precedence over, and abrogate the *Hadīth* of Buraydah رَضِيَ اللَّهُ عَنْهُ, hold that the *Jizyah* cannot be accepted from the polytheists. This is because the verses in *Sūrah at-Tawbah* (such as 9:5) were revealed after the conquest of Makkah, whereas the *Hadīth* of Buraydah رَضِيَ اللَّهُ عَنْهُ must have been prior to this, as it mentions *Hijrah*:

ثُمَّ ادْعُهُمْ إِلَى التَّحْوِيلِ ...

“... then invite them to migrate...”

However, the Prophet ﷺ said:

لَا هِجْرَةَ بَعْدَ الْفَتْحِ ...

“There is no Hijrah after the conquest (of Makkah)...”¹⁷³

Therefore, the only exception the general rule concerning fighting all of the disbelievers collectively, is the verse in *Sūrah at-Tawbah* (9:29) which makes no mention of the polytheists, but rather singles out *Ahl al-Kitāb* as being eligible to pay the *Jizyah*:

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾^{٢٩}

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islām] from those

¹⁷³ *Ṣaḥīḥ al-Bukhārī* (2783, 3899, 4305), *Ṣaḥīḥ Muslim: The Book of Hajj and The Book of Governance* (1353, 1864), *Sunan an-Nasā'ī: The Book of Bay'ah* (4169), and *Jāmi' at-Tirmidhī: The Book of Military Expeditions* (1590). The meaning of the Prophet's ﷺ words, “There is no Hijrah after the conquest,” means that since Makkah became part of the Muslim's territories after its conquest, there was no need for the Makkan Muslims to migrate to al-Madīnah as Makkah changed from being *Dār al-Kufr* to being *Dār al-Islām* (i.e. a place of *Hijrah* for Muslims residing in *Dār al-Kufr*)

who were given the Scripture - [fight] until they give the jizyah willingly while they are humiliated.

This opinion is further argued by al-Khaṭṭābī رَحِمَهُ اللهُ in *Subul as-Salām* (2/1068). He asserts, “And when ‘Umar رَضِيَ اللهُ عَنْهُ prohibited taking the *Jizyah* from the Magians, until ‘Abd ar-Raḥmān testified that the Prophet ﷺ took it from the Magians of Hajar, is evidence that the Companions were of the opinion that the *Jizyah* was not to be taken from every polytheist. This is (also) the opinion of al-Awzā’ī - that *Jizyah* is only to be taken from the People of the Book (and the Magians).”

Nevertheless, ibn Qayyim رَحِمَهُ اللهُ rejects this opinion in *Aḥkām Ahl adh-Dhimmaḥ* (1/89&90), arguing:

“As is apparent from the *Ḥadīth* (of Buraydah رَضِيَ اللهُ عَنْهُ) which does not differentiate between one disbeliever and another, the *Jizyah* is to be taken from every disbeliever. It should not be said that it was exclusive to the *Ahl al-Kitāb*, as the wording of the text does not support this (claim), (in addition to the fact that) the majority of detachments and armies the Messenger dispatched were to fight the Arab polytheists. Neither should it be said that the Qur’ān specifies the *Ahl al-Kitāb* exclusively, as Allāh the Exalted commanded that the *Ahl al-Kitāb* be fought until they pay the *Jizyah*, while the Prophet ﷺ commanded that the polytheists be fought until they pay the *Jizyah*. Thus, the *Jizyah* is taken from the *Ahl al-Kitāb* according to the Qur’ān, and from the polytheists in general according to the *Sunnah*.

The Messenger of Allāh ﷺ took it from the Magians - and they are fire worshipers - there being, no difference

between them and the polytheists (pagan Arabs).¹⁷⁴ Also, it is not correct that they are from *Ahl al-Kitāb*, neither (is it correct that) they had a (divinely revealed) book, and if the Companions regarded them as *Ahl al-Kitāb*, then ‘Umar رضي الله عنه would not have been undecided about with regards to them. Nor would the Prophet ﷺ have said, ‘Deal with them in the same fashion as you deal with the People of the Book.’ Rather this indicates that that they do not belong to *Ahl al-Kitāb*, and (besides this) Allāh has mentioned *Ahl al-Kitāb* in the Qur’ān, as well as the Prophets to whom (He) revealed books and exalted laws. However, He did not mention that the Magians possessed a book or a Prophet, neither was there any indication of that, even though they were from the greatest of nations in terms of their might, size, and strength. Instead, the Qur’ān points towards the differences that have proceeded. Therefore, if (the *Jizyah*) is taken from the worshipers of the two fires (i.e. the Magians), then what is the difference between them and the polytheists?

While if it is said, ‘The Prophet ﷺ did not take it from any of the polytheists despite his extensive fighting with them.’ Then say, ‘Yes (it is true), however this was since the verse of *Jizyah* was revealed in the ninth year *Hijrī*, the year of Tabūk, after the Arabian Peninsula had submitted, and there no longer remained any polytheist. As such, when the verse of *Jizyah* was revealed, the Prophet ﷺ took it from whoever remained from the Christians and the Magians upon their disbelief. (But) when he arrived in Madīnah he did not take it from the Jews of Madīnah,

¹⁷⁴ In fact, in *Zād al-Ma’ād* (2/32) he suggests that the pagan Arabs were better than the Magians saying, “And there is no difference between an idolater and a fire worshipper; indeed the idolaters adhered to the Religion of Ibrāhīm عليه الصلاة والسلام to an extent, unlike the fire worshipers. In fact, the fire worshipers were enemies of Ibrāhīm عليه الصلاة والسلام.” (Also in *Provisions for the Hereafter*, p.337)

neither did he take it from the Jews of Khaybar, as he conducted their treaties before the revelation of the verse of *Jizyah*.”

[End of ibn Qayyim quote]

In conclusion, it is evident that the dispute over who is eligible to pay the *Jizyah* fundamentally revolves around the question as to whether the *Hadīth* of Buraydah رَضِيَ اللَّهُ عَنْهُ was abrogated by the verses in *Sūrah at-Tawbah*, or remains applicable.

The scholars who hold that *Jizyah* is only to be taken from the *Ahl al-Kitāb* and the Magians, argue their case based upon their opinion that the *Hadīth* of Buraydah رَضِيَ اللَّهُ عَنْهُ came before, and is unable to be reconciled with the verses of *Sūrah at-Tawbah*. Therefore, according to them, the *Hadīth* of Buraydah is abrogated, and as such can no longer be applied.

While those, such as ibn Qayyim رَحِمَهُ اللَّهُ, who argue that the *Jizyah* may be taken from any disbeliever (with the exception of apostates), hold that the *Hadīth* of Buraydah رَضِيَ اللَّهُ عَنْهُ was not abrogated and that, according to them, the polytheists in general are no worse than the fire worshipping Magians. Therefore, logic dictates that if the believers accept the *Jizyah* from the Magians, then those less severe in disbelieve should also have the *Jizyah* accepted from them - and Allāh ﷻ knows best.

عَلَّةُ قِتَالِ الْكُفَّارِ

THE REASON FOR FIGHTING THE DISBELIEVERS

The question is often posed as to reason Allāh, the Most Wise, legislated fighting the disbelievers; ‘Is it because of their

aggression against the Muslims, or simply because of their disbelief?’

Many contemporary Muslims, preachers and laymen alike, have been kept in the dark regarding the truth, or knowing it, find it more expedient to state it is due to their aggression. Thus, *Jihād* is relegated to an act only applicable in instances of self-defence, after all avenues of political dialogue with, in most cases, an enemy that only understands the language of threats and violence have been exhausted.

While such a claim indeed appears reasonable and logical to believer and disbeliever alike, it is simply not true, and ignores the reality of the Islamic *Sharī'ah*, and the very nature of the age-old conflict between Truth and falsehood. In addition, it is reeks of the apologetic behaviour that has come to characterise many ‘moderate’ Muslims - one which assumes that Islām is in need of justifying itself to the misguided disbelievers. Truly a concept alien to the very spirit of *Jihād*, and indeed Islām itself.

Allāh ﷻ states in *Sūrah al-Anfāl* (8:7&8), commenting on the battle of Badr:

﴿وَيُرِيدُ اللَّهُ أَنْ يُحِقَّ الْحَقَّ بِكَلِمَاتِهِ وَيَقْطَعَ دَابِرَ الْكَافِرِينَ ﴿٧﴾
لِيُحِقَّ الْحَقَّ وَيُبْطِلَ الْبَاطِلَ وَلَوْ كَرِهَ الْمُجْرِمُونَ ﴿٨﴾﴾

But Allāh intended to establish the truth by His words and to eliminate the disbelievers. That He should establish the truth and abolish falsehood, even if the criminals disliked it.

Shaykh ‘Abd ar-Raḥmān as-Sa’dī رَحْمَةُ اللَّهِ عَلَيْهِ commented in his *Tafsīr* (p.293) saying that:

فلا يبالي الله بهم

“Allāh does not care about them (i.e. the criminals).”

As such, with a similar attitude should any discussion on this topic be dealt with.

Accordingly, the reason the *Sharī'ah* legislates the fighting of the disbelievers is due to their disbelief, and not merely their aggression. However, their aggression makes fighting them *Wājib*. This point can be realised by the fact that it is permissible for the Muslims to initiate fighting against the disbelievers, even if the latter had not previously attacked the Muslims, as has been covered in the third chapter which details the fourth stage of *Jihād*.

Imām Abū Bakr Jaṣṣāṣ رحمته الله says in *Aḥkām al-Qur'ān* (3/191), “We do not know of anyone of the jurists that prohibit fighting those who have abandoned fighting us from the polytheists.” He also says (1/321), “And as for the words of Allāh (2:191):

﴿وَأَقْتُلُواهُمْ حَيْثُ ثَقِفْتُمُوهُمْ وَأَخْرِجُوهُمْ مِّنْ حَيْثُ أَخْرَجُوكُم﴾

And kill them wherever you overtake them and expel them from wherever they have expelled you

Indeed, they are an order to kill the polytheists whenever we are victorious over them. This is a general ruling with regards to fighting the polytheists, whether they initiate fighting against us or not, once they are from the *Harbiyyīn*, and not from those prohibited to kill from amongst the women and children...”

In *al-Mabsūṭ* (26/132), *Imām* ash-Sharkhasī رحمته الله says, “... and the evidence for the fact that we are ordered to kill the disbelievers because of their disbelief, is the statement of Allāh the Exalted (8:39):

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ﴾

And fight them until there is no fitnah

... meaning, the *fitnah* of disbelief. Likewise, he ﷺ has said:

أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَقُولُوا: لَا إِلَهَ إِلَّا اللَّهُ

‘I have been ordered to fight the people until they say: There is no deity worthy of worship except Allāh...’¹⁷⁵

Imām al-Qurṭubī رحمه الله says in his *Tafsīr* (1/723&724), “The words of the Exalted:

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ لِلَّهِ فَإِنْ أَنْتَهُمْ فَلَا عُدْوَانَ إِلَّا

عَلَى الظَّالِمِينَ﴾

*Fight them until there is no [more] fitnah and [until] religion is [acknowledged to be] for Allāh. But if they cease, then there is to be no aggression [i.e., assault] except against the oppressors.*¹⁷⁶

For those who regard the verse as being of those that abrogate (other verses) it is an order to fight every polytheist in every situation. While as for those who maintain that it does not abrogate (other verses), then its meaning is ‘fight those who Allāh said regarding them: **But if they fight you...**’ [2:191].

¹⁷⁵ Ṣaḥīḥ al-Bukhārī: *The Book of Jihād* (2946), Ṣaḥīḥ Muslim: *The Book of Faith* (21), Sunan an-Nasā’ī: *The Book of Jihād* (3090), Sunan ibn Mājah: *The Book of Tribulations* (3928), Jāmi’ at-Tirmidhī: *The Book of Tafsīr* (3341), Sunan Abī Dāwūd: *The Book of Jihād* (2640), and others. Al-Albānī declared the Ḥadīth as Mutawātir

¹⁷⁶ Sūrah al-Baqarah (2):193

However, the first is more likely, and it is an unrestricted command to fight, with no condition (mentioned) that the disbelievers have to be the initiators of the fighting. Evidence for this is present in the words, **and [until] religion is for Allāh**. Also, the saying of the Prophet ﷺ:

أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَقُولُوا: لَا إِلَهَ إِلَّا اللَّهُ

‘I have been ordered to fight the people until they say: There is no deity worthy of worship except Allāh...’¹⁷⁷

Thus, the verse and *Hadīth*, are evidence that the reason for fighting is disbelief, as He said **until there is no [more] fitnah**, meaning disbelief. Consequently, it is obvious that He ﷻ made the eradication of disbelief the goal of fighting.

Ibn ‘Abbās, Qatādah, ar-Rabī’, as-Suddī, and others have said, ‘**Fitnah** (in the verse) is *Shirk*, and anything accompanying it that harms the believers.’

Additionally, His words, **But if they cease**, means, from disbelief; either by them embracing Islām, as has preceded in the previous verse [2:192], or by paying the *Jizyah* according to the rights of the *Ahl al-Kitāb* [...]. However, if they refuse, then they are the oppressors whom there is no animosity against except them,¹⁷⁸ and they are to be killed.”

¹⁷⁷ Ṣaḥīḥ al-Bukhārī: *The Book of Jihād* (2946), Ṣaḥīḥ Muslim: *The Book of Faith* (21), *Sunan an-Nasā’ī: The Book of Jihād* (3090), *Sunan ibn Mājah: The Book of Tribulations* (3928), *Jāmi’ at-Tirmidhī: The Book of Tafṣīr* (3341), *Sunan Abī Dāwūd: The Book of Jihād* (2640), and others.

¹⁷⁸ Referring to the words of Allāh (2:193):

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ لِلَّهِ فَإِنْ أَنْتَهُمْ فَلَا عُدْوَانَ إِلَّا عَلَى الظَّالِمِينَ﴾

Fight them until there is no [more] fitnah and [until] religion [i.e., worship] is [acknowledged to be] for Allāh. But if they cease, then there is to be no aggression [i.e., assault] except against the oppressors.

Imām at-Ṭarsūsī رَحِمَهُ اللهُ says, “Fighting the disbelievers is *Wājib*, even if they do not initiate it.”¹⁷⁹

Al-Ḥāfidh ibn Kathīr رَحِمَهُ اللهُ states in his *Tafsīr* (4/408) on the verses (9:30&31): “Fighting the Jews and Christians is legislated because they are idolaters and disbelievers.”

Imām ibn Qayyim رَحِمَهُ اللهُ says in *Zād al-Ma’ād* (1/642) after mentioning the stages of pardoning and forgiveness, and then of permission to fight, “Then it was made *Wājib* upon them (i.e. the Muslims) to fight those who fought them, and not those who did not fight them, with the statement [2:190]:

﴿وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ﴾

Fight in the way of Allāh those who fight you

Thereafter, it was made *Wājib* upon them to fight the polytheists unrestrictedly. (A command) that had been prohibited, then permitted, then *Wājib* in the case of self-defence, and then *Wājib* (offensively) against all of the polytheists.”¹⁸⁰

Imām ibn Ḥazm رَحِمَهُ اللهُ said in *al-Muḥallā* (5/362), “And the statement(s) of Allāh:

﴿فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ
وَخُذُوهُمْ وَاحْصُرُوهُمْ وَأَقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ إِن تَابُوا وَأَقَامُوا
الصَّلَاةَ وَآتَوْا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

And when the sacred months have passed, then kill the polytheists wherever you find them and capture

¹⁷⁹ *Tuhfah at-Tark fīmā Yajib an Ya'mal fī'l-Mulk* (p.65)

¹⁸⁰ Also in *Provisions for the Hereafter* (pgs.298&299)

them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakāh, let them [go] on their way. Indeed, Allāh is Forgiving and Merciful. ¹⁸¹

And:

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾ ^(٢٩)

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islām] from those who were given the Scripture - [fight] until they give the Jizyah willingly while they are humiliated. ¹⁸²

... are indicative of Allāh the Exalted not acknowledging and nullifying every treaty, thus leaving the polytheists no course but to accept Islām, or be fought. While the opportunity to pay the Jizyah in a state of humiliation, is specifically for the *Ahl al-Kitāb*.”

Ibn Taymiyyah رَحِمَهُ اللَّهُ said in *aş-Şārim al-Maslūl* (pp.218-220):

The Messenger of Allāh and his Companions used to pardon the polytheists and *Ahl al-Kitāb*, remaining patient upon their harms due to Allāh ordering them:

¹⁸¹ *Sūrah at-Tawbah* (9):5

¹⁸² *Sūrah at-Tawbah* (9):29

﴿لَتُبْلَوْنَ فِي أَمْوَالِكُمْ وَأَنفُسِكُمْ وَلَسْمَعَنَّ مِنَ الَّذِينَ
أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ وَمِنَ الَّذِينَ أَشْرَكُوا أَذًى كَثِيرًا وَإِنْ
تَصْبِرُوا وَتَتَّقُوا فَإِنَّ ذَلِكَ مِنْ عَزْمِ الْأُمُورِ﴾¹⁸³

*And you will surely hear from those who were given the Scripture before you and from those who associate others with Allāh much abuse. But if you are patient and fear Allāh – indeed, that is of the matters [worthy] of determination.*¹⁸³

And He, Glorified and Exalted, said:

﴿وَدَّ كَثِيرٌ مِّنْ أَهْلِ الْكِتَابِ لَوْ يَرُدُّونَكُم مِّنْ بَعْدِ
إِيمَانِكُمْ كُفَّارًا حَسَدًا مِّنْ عِنْدِ أَنفُسِهِمْ مِّنْ بَعْدِ مَا
تَبَيَّنَ لَهُمُ الْحَقُّ فَاعْفُوا وَاصْفَحُوا حَتَّى يَأْتِيَ اللَّهُ بِأَمْرٍ إِنَّ اللَّهَ
عَلَى كُلِّ شَيْءٍ قَدِيرٌ﴾¹⁸⁴

*Many of the People of the Scripture wish they could turn you back to disbelief after you have believed, out of envy from themselves [even] after the truth has become clear to them. So pardon and overlook until Allāh delivers His command. Indeed, Allāh is over all things competent.*¹⁸⁴

Therefore, until he ﷺ was permitted to fight, the Messenger of Allāh was, according to Allāh's order, the foremost in pardoning (the disbelievers). Thus, when the Messenger of Allāh ﷺ fought at Badr, and Allāh killed whom He killed from the courageous and the leaders of

¹⁸³ Sūrah Āl 'Imrān (3):186

¹⁸⁴ Sūrah al-Baqarah (2):109

the disbelieving Quraysh, ibn Ubay ibn as-Salūl and those with him from the polytheists said, 'This affair has turned in his favour, so pledge allegiance to the Messenger of Allāh.' Thus, they (outwardly) became Muslims.

'Alī ibn Abī Ṭalḥah narrated from ibn 'Abbās رَضِيَ اللَّهُ عَنْهُ that, "The Exalted's words:

﴿وَأَعْرِضْ عَنِ الْمُشْرِكِينَ﴾¹⁸⁵

*and turn away from those who associate others with Allāh.*¹⁸⁵

﴿لَسْتَ عَلَيْهِمْ بِمُصَيِّرٍ﴾¹⁸⁶

*You are not over them a controller*¹⁸⁶

﴿فَاعْفُ عَنْهُمْ وَاصْفَحْ﴾¹⁸⁷

*But pardon them and overlook [their misdeeds].*¹⁸⁷

﴿وَإِنْ تَعْفُوا وَتَصْفَحُوا وَتَغْفِرُوا﴾¹⁸⁸

*But if you pardon, overlook, and forgive*¹⁸⁸

﴿فَاعْفُوا وَاصْفَحُوا حَتَّى يَأْتِيَ اللَّهُ بِأَمْرٍ﴾¹⁸⁹

*So pardon and overlook until Allāh delivers His command.*¹⁸⁹

¹⁸⁵ Sūrah al-An 'ām (6):106

¹⁸⁶ Sūrah al-Ghāshiyah (88):22

¹⁸⁷ Sūrah al-Mā'idah (5):13

¹⁸⁸ Sūrah at-Taghābun (64):14

¹⁸⁹ Sūrah al-Baqarah (2):109

﴿قُلْ لِلَّذِينَ آمَنُوا يَغْفِرُوا لِلَّذِينَ لَا يَرْجُونَ أَيَّامَ اللَّهِ﴾

Say to those who have believed that they [should] forgive those who expect not the days of Allāh [i.e., of His retribution] ¹⁹⁰

... and the likes of these from amongst that which Allāh commanded the believers with in the Qur’ān regarding pardoning and overlooking the polytheists, were all abrogated by His words:

﴿فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ﴾

kill the polytheists wherever you find them ¹⁹¹

And:

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ﴾

Fight those who do not believe in Allāh or in the Last Day,

Until His words:

﴿وَهُمْ صَغُرُوا﴾

while they are humiliated.” ¹⁹²

Likewise, *Imām* Aḥmad and others narrate from Qatādah: ‘Allāh ordered His Prophet ﷺ to overlook and pardon them until Allāh’s command and judgement came to pass.

¹⁹⁰ *Sūrah al-Jāthiyah* (45):14

¹⁹¹ *Sūrah at-Tawbah* (9):5

¹⁹² *Sūrah at-Tawbah* (9):29

Thereafter, Allāh, the Glorified and Exalted, revealed *Barā'ah*, saying:

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ﴾

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful¹⁹³

This verse abrogated all that was before it, and thus Allāh ordered through it the fighting of the *Ahl al-Kitāb* until they embrace Islām, or choose (to accept) resentment and pay the *Jizyah* in (a state of) humiliation.”

Moreover, Mūsā ibn ‘Uqbah narrated from az-Zuhrī, ‘He did not fight those who did not fight him according to the words of the Exalted:

﴿فَإِنْ أَعْرَضُوا عَنْكُمْ فَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ﴾

So if they remove themselves from you and do not fight you and offer you peace, then Allāh has not made for you a cause [for fighting] against them.¹⁹⁴

... until *Barā'ah* was revealed.”

To summarize, when *Barā'ah* was revealed, he was ordered to disassociate from, and wage war against every

¹⁹³ *Sūrah at-Tawbah* (9):29

¹⁹⁴ *Sūrah an-Nisā'* (4):90

disbeliever, and nullify every unrestricted treaty¹⁹⁵ that had existed between them, irrespective of whether they had fought him or not.

So, after having previously been told:

﴿وَلَا تُطِيعُوا الْكٰفِرِيْنَ وَالْمُنٰفِقِيْنَ وَدَعُوْا اٰذَنَهُمْ﴾

And do not obey the disbelievers and the hypocrites but do not harm them,¹⁹⁶

It was said to him:

﴿يٰۤاَيُّهَا الَّذِيْ جٰهَدِ الْكٰفِرَ وَالْمُنٰفِقِيْنَ وَاَعْلَظْ عَلَيْهِمْ﴾

O Prophet, fight against the disbelievers and the hypocrites and be harsh upon them.^{197, 198}

And, as has been demonstrated, this has been the understanding of the past generations of scholars, from the era of the Companions رضي الله عنهم up until the last century, as evident in the words of Shaykh Muḥammad ibn Ibrāhīm رحمه الله. He said in his *Fatāwā wa Rasā'il* (6/198), “As is well known, the polytheists are fought due to their *Shirk*, not their aggression, with the evidence being the *Ḥadīth*: “*I have been ordered to fight the people until they testify: There is no deity worthy of worship except Allāh, and Muḥammad is His Messenger...*” And he عليه السلام did not say, ‘We will fight whoever fights us, and not who we fear his evil.’

¹⁹⁵ i.e. Open-ended treaties that did not have a specified time-period attached to them, unlike the Treaty of Ḥudaybiyyah which was contracted to halt hostilities for a ten year period

¹⁹⁶ *Sūrah al-Aḥzāb* (33):48

¹⁹⁷ *Sūrah at-Tawbah* (9):73

¹⁹⁸ Also in *Tafsīr Shaykh al-Islām ibn Taymiyyah* (3/306&307)

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ﴾

Fight those who do not believe in Allāh

So this (verse) is evidence that fighting them is qualified (by the words): ***those who do not believe***, and this is the '*Illah* (reason behind fighting)."

Thus, those who have emerged during the current period of disgrace and humiliation for the Muslims, claiming other than what has been narrated by their predecessors must be asked, 'Who preceded you in your opinions?' Because, as is evident, it was not the same inheritors of the Prophets ﷺ who conveyed the religion to the rest of us, that conveyed their apologetic opinions to them.

In conclusion, *Shaykh al-Islām* ibn Taymiyyah رَحِمَهُ اللَّهُ unapologetically expounds, in *as-Siyāsah ash-Shar'īyyah* (pgs.120&121), as to why Allāh has permitted the wealth and blood of the disbelievers stating, "The basic rule (*Aṣl*) is that Allāh, the Most High, created money only to assist (its owners in) His worship. Therefore, those who disbelieve in Him permit their selves, with which they do not worship Him, and their wealth, with which they do not use to assist them in worshipping Him, for His believing slaves who worship Him. Thus, He returned to them that which they deserve, just as He returns to the person whose inheritance was wrongfully taken, even if he had not previously possessed it (i.e. the inheritance wealth) ..."

He also explains as to why they are fought (p.251), saying, "Thus, everyone that the message of the Messenger of Allah ﷺ calling to the religion of Allāh that he was sent with, and rejects it, then it is indeed *Wājib* to fight him ***until there is no fitnah and [until] the religion, all of it, is for Allāh***" ¹⁹⁹

¹⁹⁹ *Sūrah al-Anfāl* (8):39

CHAPTER 11

الأصناف الذين يقاتلون:

المرتدون

THE CATEGORIES OF PEOPLE FOUGHT (FOR THE SAKE OF ALLĀH): THE APOSTATES

The **second** category of those the *Sharī'ah* legislates fighting is the apostates.

تعريف الردّة

DEFINITION OF APOSTASY

In *al-Mughnī: Kitāb al-Murtad* (9/3) ibn Qudāmah رحمه الله defines apostasy as, “Reverting from the religion of Islām to disbelief. Allāh the Exalted says:

﴿وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِ ۖ فِمُتَّ وَهُوَ كَافِرٌ فَأُولَٰئِكَ
حَبِطَتْ أَعْمَالُهُمْ فِي الدُّنْيَا وَالْآخِرَةِ وَأُولَٰئِكَ أَصْحَابُ النَّارِ
هُم فِيهَا خَالِدُونَ﴾^(٢١٧)

*And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire; they will abide therein eternally.*²⁰⁰

Imām an-Nawawī رحمه الله states in *Minhāj at-Tālibīn* (p.131), “It is the discontinuation of Islām (i.e. leaving Islām) by an intention, a statement of disbelief, or an action.

It is the same whether it is due to joking or mocking, stubbornness, or a belief. Hence, whoever rejects the Creator, the Messengers, belies a Messenger, makes permissible (*Halāl*) what is known to be *Harām* by consensus such as adultery, or vice versa. Or, rejects an agreed upon obligation, or its opposite, resolves to commit disbelief in the future, or wavers in this decision. Likewise, whoever commits an act of disbelief, mocks the religion, or stubbornly denies (any aspect from) the religion, such as disregarding the Qur’ān through the abominable act of prostrating to an idol, or to the Sun.

That being said, the apostasy of the minor, the insane, or the coerced is not to be established (i.e. they are not to be ruled as apostates).”

²⁰⁰ *Sūrah al-Baqarah* (2):217

الحكم قتال المرتد THE RULING REGARDING FIGHTING THE APOSTATE

Allāh ﷻ says in *Sūrah al-Baqarah* (2:217):

﴿وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِۦ فِيمَتٌ وَهُوَ كَافِرٌ فَأُولَٰئِكَ
حَبِطَتْ أَعْمَالُهُمْ فِي الدُّنْيَا وَالْآخِرَةِ وَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ
فِيهَا خَالِدُونَ﴾

And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire; they will abide therein eternally.

The above verse establishes the evidence for revoking the kindness that belief necessitates, and killing the apostate. Additionally, in *Ṣaḥīḥ al-Bukhārī* (3017), the Prophet ﷺ said:

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

“Whoever changes his religion (from Islām) then kill him.”

Imām ibn Qudāmah رَحِمَهُ اللَّهُ says in al-Mughnī: Kitāb al-Murtad (9/3), “The people of knowledge are agreed upon the obligation of killing the apostate. This has been reported from Abū Bakr, ‘Umar, ‘Uthmān, ‘Alī, Mu’ādh, Abū Mūsā, ibn ‘Abbās, Khālīd, and others. No one has disapproved of this opinion; therefore it is consensus (Ijmā’).”

There is likewise consensus on the fact that *Jizyah* is not to be accepted from the apostate, rather he returns to Islām or is killed.

In *Majmū' al-Fatāwā* (28/534), *Shaykh al-Islām* ibn Taymiyyah رَحِمَهُ اللهُ says, "It is firmly established in the *Sunnah* that the punishment for the apostate is greater in severity than that of the 'disbeliever of origin' (*Kāfir Aṣlī*)²⁰¹ from a number of perspectives:

- The apostate, unlike the disbeliever of origin, is killed in every situation, is ineligible to pay the *Jizyah*, and neither can he be given a contract of *Dhimmah*.
- Unlike the disbeliever of origin, the apostate is killed even if he is incapable of fighting [...]. Likewise, according to the majority opinion held by the likes of Mālik, ash-Shāfi'ī, and Aḥmad, the female apostate is (also) to be killed.
- The apostate, unlike the disbeliever of origin, does not, and is not inherited from, neither are their marriage contracts valid, nor their slaughter permissible to consume, and other than these from the rulings of Islām."

The scholars, however, have differed over two issues related to the apostate, which have given rise to some confusion amongst some of the Muslims:

- 1) Should the apostate be called to repent before they are executed (for the crime of apostasy), or are they executed regardless?
- 2) Does the female apostate have the same ruling as the male concerning the mandatory punishment of execution?

²⁰¹ The *Kāfir Aṣlī* (كافر أصلي) is the disbeliever that has been raised a disbeliever, such as the Jews, Christians, Pagans, Hindus, etc. This is opposed to the apostate, who has once been a Muslim but then abandoned Islām for disbelief, and thus his *Aṣl* (origin) is that of Islām, and not *Kufr*

In relation to the first issue, there are two well-known opinions amongst the scholars:

The **first** is that they are encouraged to repent. If they do, then they are left. However, if they refuse they are executed.

Scholars that were known to have held this opinion are ‘Umar, ‘Uthmān, ‘Alī, and has been reported from ‘Aṭā’, an-Nakh’ī, ath-Thawrī, and al-Awzā’ī. Likewise, this was also the opinion of Abū Ḥanīfah, Mālik, ash-Shāfi’ī, Aḥmad, Ishāq, and others رَحِمَهُمُ اللَّهُ.

They cite as evidence verses that mention the repentance of the disbelievers in a general fashion, without specifying whether they possessed faith before, or not. Such as the verse in *Sūrah al-Anfāl* (8:38) wherein Allāh ﷻ says:

﴿قُلْ لِلَّذِينَ كَفَرُوا إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ﴾

Say to those who have disbelieved [that] if they cease, what has previously occurred will be forgiven for them.

Allāh ﷻ also says in *Sūrah an-Nisā* (4:146-147):

﴿إِلَّا الَّذِينَ تَابُوا وَأَصْلَحُوا وَاعْتَصَمُوا بِاللَّهِ وَأَخْلَصُوا دِينَهُمْ لِلَّهِ فَأُولَٰئِكَ مَعَ الْمُؤْمِنِينَ وَسَوْفَ يُؤْتِي اللَّهُ الْمُؤْمِنِينَ أَجْرًا عَظِيمًا ۝١٤٦ مَا يَفْعَلُ اللَّهُ بِعَذَابِكُمْ إِنْ شَكَرْتُمْ وَءَامَنْتُمْ وَكَانَ اللَّهُ شَاكِرًا عَلِيمًا ۝١٤٧﴾

Except for those who repent, correct themselves, hold fast to Allāh, and are sincere in their religion for Allāh, for those will be with the believers. And Allāh

is going to give the believers a great reward. What would Allāh do with [i.e., gain from] with your punishment if you are grateful and believe? And ever is Allāh Appreciative and Knowing.

Ibn Qudāmah رَحِمَهُ اللهُ says in *al-Mughnī* (9/4), “(The apostate) is not to be killed until he is encouraged to repent over a period of three days. This is the opinion of the majority of the people of knowledge, such as ‘Umar, ‘Alī, ‘Aṭā’, an-Nakh’ī, Mālik, ath-Thawrī, al-Awzā’ī, *Aṣḥāb ar-Ra’ī* (i.e. the *Ḥanafī*’s), and has been reported as one of the statements of ash-Shāfi’ī. It has been reported from Aḥmad, and is the second opinion reported from ash-Shāfi’ī, that encouraging the apostate to repent is not obligatory, but rather it is recommended. ‘Ubayd ibn ‘Umayr, Ṭāwūs, and al-Ḥasan also share this opinion.”²⁰²

Ibn Qudāmah (9/6) further clarifies the rationale behind this, saying, “Apostasy usually arises because of a doubt, and is (generally) not dispelled instantly. Accordingly, time is given for them to consider.”²⁰³

As for the **second** opinion, it argues that the apostate is to be executed for the crime of apostasy, regardless of repentance. Although it does acknowledge that if the apostate repents before his execution, then this may indeed benefit him with Allāh (in the Afterlife), but will not waive the punishment of execution.

Evidence used to support this opinion is contained within the *Ḥadīth* in *Ṣaḥīḥ al-Bukhārī* (3017) that has preceded:

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

“Whoever changes his religion (from Islām), then kill him.”

²⁰² *Al-Mughnī* (7086), also refer to an-Nawawī’s *Sharḥ* of *Ṣaḥīḥ Muslim* (*al-Minhāj Sharḥ al-Jāmi’ aṣ-Ṣaḥīḥ*)

²⁰³ *Al-Mughnī* (7086)

Proponents of this opinion are the likes of Ṭawūs, al-Ḥasan, ibn Mājushūn al-Mālikī, Abū Yūsuf, the Dhāhiriyyah, and is likewise reported, according to one view, from ash-Shāfi'ī and Aḥmad رَحِمَهُمُ اللَّهُ.

Appearing to support this view is the *Ḥadīth* recorded by Muslim in his *Ṣaḥīḥ: The Book of Governance* (1733), in which the Prophet ﷺ said:

لَنْ، أَوْ لَا نَسْتَعْمِلُ عَلَى عَمَلِنَا مَنْ أَرَادَهُ، وَلَكِنْ اذْهَبْ أَنْتَ يَا أَبَا مُوسَى، أَوْ يَا عَبْدَ اللَّهِ بْنَ قَيْسٍ، فَبَعَثْهُ عَلَى الْيَمَنِ، ثُمَّ أَتْبِعْهُ مُعَاذَ بْنِ جَبَلٍ، فَلَمَّا قَدِمَ عَلَيْهِ، قَالَ: أَنْزِلْ، وَالْقَى لَهُ وَسَادَةً وَإِذَا رَجُلٌ عِنْدَهُ: مُوثِقٌ، قَالَ: مَا هَذَا؟ قَالَ: هَذَا كَانَ يَهُودِيًّا فَأَسْلَمَ، ثُمَّ رَاجَعَ دِينَهُ دِينَ السَّوِّ فَتَهَوَّدَ، قَالَ: لَا أَجْلِسُ حَتَّى يُقْتَلَ قَضَاءُ اللَّهِ وَرَسُولِهِ، فَقَالَ: اجْلِسْ، نَعَمْ، قَالَ: لَا أَجْلِسُ حَتَّى يُقْتَلَ قَضَاءُ اللَّهِ وَرَسُولِهِ، ثَلَاثَ مَرَّاتٍ، فَأَمَرَ بِهِ فَقُتِلَ، ثُمَّ تَذَاكُرَا الْقِيَامَ مِنَ اللَّيْلِ

“We shall not, or never, appoint over public affairs those who desire them (i.e. the positions), but you may go, Abū Mūsā.” He sent him to Yemen as a governor, then he sent Mu’ādh ibn Jabal in his wake (to assist him). when Mu’ādh reached the camp of Abū Mūsā, the latter received him and said, “Please dismount (from your ride),” and he spread for him a mattress, while there was a man bound hand and foot as a prisoner. Mu’ādh said, “Who is this?” Abū Mūsā replied, “He was a Jew - he embraced Islām then reverted to his false religion.” Mu’ādh said, “I will not sit until he is killed according to the decree of Allāh and His Messenger.” Abū Mūsā said, “Sit down, it will be done.” He replied, “I will not sit unless he is killed according to the decree of Allāh and His Messenger.” He repeated these words thrice. Thereafter Abū Mūsā ordered (that he be killed) and he was.

Then the two talked about (the issue of) standing in prayer during the night...²⁰⁴

Although one may feel the two opinions somewhat contradictory, ibn Taymiyyah رَحِمَهُ اللهُ clarifies the apparent contradiction explaining, “Apostasy is of two types; **Simple Apostasy** (*ar-Riddah al-Mujarradah*), and **Aggravated Apostasy** (*ar-Riddah al-Mughalladhah*).”²⁰⁵ In *Majmū’ al-Fatāwā* (20/103) he states, “(the type of) apostasy must be distinguished - between Simple Apostasy; in which case the apostate is executed unless they repent, and Aggravated Apostasy; in which case the apostate is executed without being asked, and regardless of their voluntarily repentance.”

As for *Aggravated Apostasy*, the above statement of ibn Taymiyyah رَحِمَهُ اللهُ refers to their ruling if they are apprehended before they repent (and amend their ways). Meaning, if they repent before they are apprehended it is accepted (by the judge), and they are left.

Examples of the above category are many, such as those who repented during the ‘Wars of Apostasy’ that took place during the caliphate of Abū Bakr *aṣ-Ṣiddīq* رَضِيَ اللهُ عَنْهُ.

²⁰⁴ Similar narrations are also found in *Ṣaḥīḥ al-Bukhārī: The Book of Apostates* (6923), *Sunan Abī Dāwūd: The Book of Prescribed Punishments* (4354, 4355), and *Sunan an-Nasā’ī: The Book of Fighting [The Prohibition of Bloodshed]* (4066)

²⁰⁵ *aṣ-Ṣārim al-Maslūl* (p.366)

النوعان من الردّة: الردّة المجردة والردّة المغلطة

Ar-Riddah al-Mujarradah (Simple Apostasy) is apostasy unaccompanied with any aggravating factors. As such, this type of apostasy usually only affects the apostate, such as abandoning the prayer, or disbelieving inwardly in any of the pillars of belief. While *ar-Riddah al-Mughalladhah* (Aggravated Apostasy) is apostasy accompanied with aggravating factors, such as fighting (waging war) against Islām and/or the Muslims with word or deed, and cursing the Messenger ﷺ.

As for those apprehended before they repent; they are executed regardless of any subsequent repentance. An example of this is in the narration recorded in *Ṣaḥīḥ al-Bukhārī: The Book of the Limits and Punishments Set by Allāh* (6805):

عَنْ أَنَسِ بْنِ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ: أَنَّ رَهْطًا مِنْ عُكْلٍ، أَوْ قَالَ: عُرَيْنَةَ، وَلَا أَعْلَمُهُ إِلَّا قَالَ: مِنْ عُكْلٍ، قَدِمُوا الْمَدِينَةَ فَأَمَرَ لَهُمُ النَّبِيُّ ﷺ بِلِقَاحٍ، وَأَمَرَهُمْ أَنْ يَخْرُجُوا فَيَشْرَبُوا مِنْ أَبْوَالِهَا وَالْبَائِنِهَا فَشَرِبُوا حَتَّى إِذَا بَرُّوا قَتَلُوا الرَّاعِي، وَاسْتَأْفُوا النَّعَمَ، فَبَلَغَ ذَلِكَ النَّبِيَّ ﷺ غُدُوَةً، فَبَعَثَ الطَّلَبَ فِي إِثْرِهِمْ، فَمَا ارْتَفَعَ النَّهَارُ حَتَّى جِيءَ بِهِمْ فَأَمَرَ بِهِمْ فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمَرَ أَعْيُنَهُمْ، فَأُلْفُوا بِالْحَرَّةِ يَسْتَسْقُونَ فَلَا يُسْقَوْنَ قَالَ أَبُو قِلَابَةَ: هَؤُلَاءِ قَوْمٌ سَرَقُوا وَقَتَلُوا وَكَفَرُوا بَعْدَ إِيمَانِهِمْ، وَحَارَبُوا اللَّهَ وَرَسُولَهُ

Anas رَضِيَ اللَّهُ عَنْهُ narrated that a group of people from ‘Ukl (or ‘Uraynah) tribe - but I think he said that they was from ‘Ukl came to Madīnah and (they became ill, so) the Prophet ﷺ ordered them to go out (of the city) and drink from the camels milk and urine (as a medicine). So they went out (as ordered), and when they became healthy they killed the shepherd and stole the camels. This news reached the Prophet ﷺ early in the morning, so he sent (some) men in their pursuit, and they were captured and brought to the Prophet ﷺ before midday. He ordered that their hands and feet be amputated and their eyes to be branded with hot pieces of iron, and they were thrown at al-Harrah, and when they asked for water to drink, none was given to them.

Abū Qibalah²⁰⁶ said, “Those were the people who committed theft and murder, reverted to disbelief after having been

²⁰⁶ He is the narrator that narrated the *Ḥadīth* from Anas ibn Mālik رَضِيَ اللَّهُ عَنْهُ

believers (i.e. Muslims), and fought against Allāh and His Messenger ﷺ.”²⁰⁷

As for the second issue:

هل الحكم المرتدة نفس الحكم المرتد؟

IS THE RULING REGARDING THE FEMALE THE SAME AS THE MALE APOSTATE?

Regarding the female apostate, the scholars have three opinions on the issue:

The **first** is that they are the same their male counterparts as far as their ruling and punishment are concerned. This is due to generality of the *Ḥadīth* in *Ṣaḥīḥ al-Bukhārī* (3017):

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

“Whoever changes his religion, then kill him.”

Abū Bakr *aṣ-Ṣiddīq* رَضِيَ اللَّهُ عَنْهُ was reported to have held this opinion. This is likewise reported from notables such as al-Ḥasan, az-Zuhrī, an-Nakh'ī, Makḥūl, Ḥammād, Mālik, al-Layth, al-Awzā'ī, ash-Shāfi'ī, Ishāq, and ibn Ḥazm رَضِيَ اللَّهُ عَنْهُمْ.

The **second** opinion is that she should be imprisoned. It is reported that this was the opinion of 'Alī رَضِيَ اللَّهُ عَنْهُ, al-Ḥasan, Qatādah, 'Umar ibn 'Abd al-'Azīz, and Abū Ḥanīfah according to one such report from him رَضِيَ اللَّهُ عَنْهُمْ.

²⁰⁷ Similar narrations are also found in *Ṣaḥīḥ Muslim: The Book of Oaths, Muharibin, Qisas, and Diyat* (1671), *Jāmi' at-Tirmidhī* (72), *Sunan Abī Dāwūd: The Book of the Prescribed Punishments* (4364), *Sunan ibn Mājah* (2578), and *Sunan an-Nasā'ī: The Book of Fighting [The Prohibition of Bloodshed]* (4024)

This opinion was derived due to Abū Bakr رَضِيَ اللَّهُ عَنْهُ enslaving some of the women and children from Banī Ḥanīfah during the ‘Wars of Apostasy.’ He gave one of the women to ‘Alī رَضِيَ اللَّهُ عَنْهُ, who later bore him a child. It was not reported that any of the Companions present objected to the actions of Abū Bakr (i.e. in enslaving the women).

The **third** opinion is that, if they are apprehended in *Dār al-Islām* they are to be imprisoned and encouraged to return to Islām, even if this necessitates their beating. If they repent, then they are released, however if they do not, they are detained indefinitely. On the other hand, if she is discovered in *Dār al-Kufr* after her apostasy, then it is permissible to enslave her according to the *Ḥanaḥī* School. This is owing to their interpretation of the Prophet’s ﷺ general prohibition of intentionally killing women.

Nevertheless, it appears that the correct opinion is the first - and Allāh knows best - based on the *Ḥadīth*:

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

“Whoever changes his religion, then kill him.”

In addition, the *Ḥadīth* recorded in both *Ṣaḥīḥ al-Bukhārī: The Book of Blood Money* (6878) and *Ṣaḥīḥ Muslim: The Book of Oaths, Muharibin, Qisas, and Diyat* (1676), in which the Prophet ﷺ stated:

لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ، يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّي رَسُولُ اللَّهِ، إِلَّا
بِإِحْدَى ثَلَاثٍ: الشَّيْبُ الزَّانِي، وَالنَّفْسُ بِالنَّفْسِ، وَالتَّارِكُ لِدِينِهِ الْمُفَارِقُ
لِلْجَمَاعَةِ

“It is not permissible to take the life of a Muslim who testifies that ‘there is no deity worthy of worship except Allāh,’ and I am

'the Messenger of Allāh,' except in one of three cases: the married adulterer, a life for a life, and the deserter of his religion abandoning the community (of Muslims).'"

"And this is because," states ibn Qudāmah رَحِمَهُ اللَّهُ, "She is a person deemed as legally responsible, who has exchanged the religion of truth for one of falsehood. Thus, she is to be killed in the same way a man would be.

As for the Prophet's ﷺ prohibition on killing women, it refers to the women from the disbelievers of origin [...] and as for the tribe of Banū Ḥanīfah, then not all of them embraced Islām (i.e. some of them remained upon disbelief). What seems apparent is that it was only their men who (initially) embraced Islām; with some of them remaining firm upon Islām, like Thumāmah ibn Uthāl, while others turned apostate, such as 'the liar from Ḥanīfah' (i.e. Musaylimah the Liar)." ²⁰⁸

Hence, ibn Qudāmah argues here that the women Abū Bakr رَضِيَ اللَّهُ عَنْهُ enslaved were not Muslims (in the first place), but were rather disbelievers of origin. Supporting this view are the instances in which the Prophet ﷺ, despite his general prohibition on killing women, ordered the execution of a number of women during his lifetime. Examples of this were the Prophet's ﷺ killing of the Jewish women who attempted to poison him, after one of his Companions died as a result of consuming the poisoned meat. His killing of one of the women of Banī Qurayzah, ²⁰⁹ and condoning of the killing of two of the

²⁰⁸ *Al-Mughnī* (9/4)

²⁰⁹ In *Sunan Abī Dāwūd: The Book of Jihād* (2671) 'Ā'ishah رَضِيَ اللَّهُ عَنْهَا reports:

لَمْ يُقْتَلْ مِنْ نِسَائِهِمْ - تَعْنِي بَنِي قُرَيْظَةَ - إِلَّا امْرَأَةً، إِنَّهَا لَعِنْدِي تُحَدِّثُ تَضَحُّكُ ظَهراً وَبَطْناً، وَرَسُولُ اللَّهِ ﷺ يَقْتُلُ رِجَالَهُمْ بِالسُّيُوفِ، إِذْ هَتَفَ هَاتِفٌ بِاسْمِهَا: أَيْنَ فُلَانَةُ؟ قَالَتْ: أَنَا، قُلْتُ: وَمَا شَأْنُكِ؟ قَالَتْ: حَدَّثَ أَحَدُنَّه، قَالَتْ: فَانْطَلِقَ

women in Madīnah that would to revile him, saying about one of them ﷺ:

أَلَا أَشْهَدُوا أَنَّ دَمَهَا هَدَرٌ

“All of you (should) testify that her blood was worthless.”²¹⁰

حُكْمُ أَوْلَادِ الْمُرْتَدِّ

THE RULING REGARDING THE CHILDREN OF THE APOSTATE

In *al-Mughnī* (9/16), ibn Qudāmah رَحِمَهُ اللَّهُ states:

“Regarding the children of the apostates, if they were born before the apostasy of their father, they are considered Muslims in accordance with the (former) Islām of their father, and not adhering to their father’s subsequent apostasy, as ‘Islām dominates.’²¹¹

بِهَا، فَضَرَبَتْ عُنُقَهَا، فَمَا أَنْسَى عَجَبًا مِنْهَا أَنَّهَا تَضْحَكُ ظَهْرًا وَبَطْنًا، وَقَدْ عَلِمْتُ أَنَّهَا تُقْتَلُ

“No woman of Banū Qurayzah was killed except one. She was with me talking and laughing on her back and on her belly (i.e. excessively laughing), while the Messenger of Allāh ﷺ was killing her people with swords. Suddenly a man called her name, ‘Where is so-and-so?’ She said, ‘I’. I asked: ‘What is the matter with you?’ She said, ‘I did a new act.’ The man then took her and beheaded her. I will not forget that she was laughing excessively although she knew that she would be killed.”

In ‘*Awn al-Ma’būd* (7/238) al-Khaṭṭābī says that, “The new act that she did was to curse the Prophet ﷺ, and this serves as evidence of the obligation of killing whoever does this.”

²¹⁰ *Ṣaḥīḥ Abī Dāwūd: The Book of Prescribed Punishments* (4361)

Refer to *aṣ-Ṣārim al-Maslūl* and *The Clarification Regarding Intentionally Targeting Women and Children* (pgs.32&33)

²¹¹ *Al-Mughnī* (7103). The Shaykh is referring to the principle of *Fiqh*:

As such, since they are regarded as Muslims it is not permissible to enslave them as minors neither as adults, as if their Islām is established after their disbelief, then they are Muslims. While if they disbelieve (as adults) their ruling is the same as their fathers - they are required to repent (otherwise they are to be killed), and it is likewise not permissible to enslave them...

However, if the children are born after their parents apostasy, then the children are ruled as disbelievers, as they were born to two disbelieving parents. In such instances, it is permissible to enslave them as they are not themselves deemed as apostates, as was established by Aḥmad..."

أثر الردة على الزواج

THE EFFECTS OF APOSTASY UPON THE SPOUSE

The scholars have agreed that if one of the spouses apostates, then their marriage contract is automatically suspended or annulled, and it is not permissible for the Muslim spouse to cohabit with, or seclude themselves with an apostate. Rather, the two are to immediately separate from one another.

If the apostasy takes place before the consummation of the marriage, then the marriage contract is annulled immediately and automatically. However, if the apostasy takes place after this, then they are separated and the contract suspended until the completion of the 'Iddah (waiting period) pending on the spouse's repentance. If they return to Islām before the

الإسلام يعلو ولا يُعلى عليه

'Islām dominates, and is not dominated'

completion of the ‘*Iddah*, their marriage resumes as before, but if the ‘*Iddah* period elapses before repentance, then a new marriage contract is required if they wish to remarry.

As such, ibn Taymiyyah رَحْمَةُ اللَّهِ says in *Majmū’ al-Fatāwā* (32/191), “...According to ash-Shāfi’ī and one of the reported statements of Aḥmad, the marriage contract does not become annulled until the completion of the ‘*Iddah*. If the husband reverts (to Islām) before the ‘*Iddah* period expires, then they resume their original marriage contract.”²¹²

كيفية قتل المرتد

HOW SHOULD THE APOSTATE BE KILLED?

According to ibn Qudāmah رَحْمَةُ اللَّهِ, who states in *al-Mughnī* (9/6), “The majority of jurists maintain that he is to be killed with the sword as it is the instrument of execution, and not be burned with fire... (and) ‘*Whoever changes his religion, then kill him*’.”²¹³

However, it should be noted that while the above is the default method of execution, the apostate may be killed in a different fashion depending on the presence of any accompanying crimes that he may have committed which also carry a death penalty, such as banditry.

Allāh ﷻ says in *Sūrah al-Mā'idah* (5:33-34):

²¹² There is a difference of opinion on this issue, however the intricacies of it are somewhat outside the scope of this work, therefore the reader is encouraged to consult works of *Fiqh* that detail the rulings regarding marriage in Islām

²¹³ *Al-Mughnī* (7087)

﴿ إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خَلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ﴿٣٣﴾ إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقَدِّرُوا عَلَيْهِمْ فَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ رَحِيمٌ ﴿٣٤﴾ ﴾

Indeed, the penalty for those who wage war against Allāh and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment, Except for those who return [repenting before you overcome [i.e., apprehend] them. And know that Allāh is Forgiving and Merciful.

Another instance in which the apostate may be killed in another way, in the case of *Qiṣāṣ* (legal retribution). Allāh ﷻ says in *Sūrah al-Baqarah* (2:178):

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَىٰ بِالْأُنْثَىٰ﴾

O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female.

And (2:194):

﴿وَالْحُرْمَتُ قِصَاصٌ فَمَنْ أَعْتَدَى عَلَيْكُمْ فَأَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا أَعْتَدَى عَلَيْكُمْ﴾

and for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you.

Meaning that in the case of the apostate, if he killed a believer, then upon capture he should be killed in the same fashion, much like how the men from ‘Ukl who killed the shepherd were dealt with. Their hands and feet were amputated in recompense for their crime of banditry. While their wounds were not cauterized, their eyes branded, and they were left to die on the rocks under the fierce desert sun, as legal retribution for their murdering the shepherd. As they were already executed for murder, their punishment for apostasy did not have to be carried out. However, if they had not murdered the shepherd, they would have still been executed for aggravated apostasy.²¹⁴

A number of scholars have however differed as to the issue of killing the apostate by burning as a method of *Qisās*, despite it being done by Abū Bakr, ‘Alī, and Khālīd رَضِيَ اللَّهُ عَنْهُمْ due to the narrations in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād* (3016):

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، أَنَّهُ قَالَ: بَعَثَنَا رَسُولُ اللَّهِ ﷺ فِي بَعْثٍ فَقَالَ: إِنْ وَجَدْتُمْ فُلَانًا وَفُلَانًا فَأَحْرِقُوهُمَا بِالنَّارِ، ثُمَّ قَالَ رَسُولُ اللَّهِ ﷺ حِينَ أَرَدْنَا الْخُرُوجَ: إِنِّي أَمَرْتُكُمْ أَنْ تُحْرِقُوا فُلَانًا وَفُلَانًا، وَإِنَّ النَّارَ لَا يُعَذِّبُ بِهَا إِلَّا اللَّهُ، فَإِنْ وَجَدْتُمُوهُمَا فَاقْتُلُوهُمَا

²¹⁴ However, there are a number of actions that are not permissible to be done as retribution to an offender as part of *Qisās*. Amongst them are rape and actions similar to it. Therefore, when the disbelievers capture and rape Muslim women - and we ask Allāh to prevent it from occurring, and punish those responsible - the Muslims are not allowed to rape the disbelievers' women as revenge. For further details regarding the issue refer to *The Clarification Regarding Intentionally Targeting Women and Children* (pp.97-100)

Abū Hurayrah رضي الله عنه narrates that Allāh's Messenger ﷺ sent us on a mission (i.e. an army unit) and said, "If you find so-and-so and so-and-so, burn both of them with fire." When we intended to depart, Allāh's Messenger ﷺ said, "I have ordered you to burn so-and-so and so-and-so, and it is none but Allāh Who punishes with fire, so if you find them, kill them (i.e. don't burn them)."

Also, in the following (3017):

عَنْ عِكْرَمَةَ، أَنَّ عَلِيًّا رضي الله عنه حَرَّقَ قَوْمًا، فَبَلَغَ ابْنَ عَبَّاسٍ فَقَالَ: لَوْ كُنْتُ أَنَا لَمْ أُحَرِّقْهُمْ لِأَنَّ النَّبِيَّ ﷺ قَالَ: لَا تُعَذِّبُوا بِعَذَابِ اللَّهِ، وَلَقَتْلُهُمْ كَمَا قَالَ النَّبِيُّ ﷺ: مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

‘Ikrimah narrates that ‘Alī رضي الله عنه burnt some people. When news of this was conveyed to ibn ‘Abbās, he said, "If it was me, I would not have burnt them as the Prophet ﷺ has said, 'Do not punish with the punishment of Allāh (i.e. Fire),' but rather would have killed them according to the Prophet's ﷺ statement, 'Kill whoever changes his religion.'"²¹⁵

كيفية استتاب المرتد ورجوعه إلى الإسلام

HOW DOES THE APOSTATE REPENT AND RETURN TO ISLĀM?

The repentance of the apostate is not acceptable unless they go back on, and rectify whatever caused them to leave the fold of

²¹⁵ Also recorded in *Jāmi' at-Tirmidhī: The Book of Legal Punishments* (1458), *Sunan Abī Dāwūd: The Book of Prescribed Punishments* (4351), and *Sunan an-Nasā'ī: The book of Fighting [The Prohibition of Bloodshed]* (4060)

Islām initially. In his *Tafsīr* (6/182), at-Ṭabarī رَحِمَهُ اللهُ mentions the principle of *Fiqh*:

أن الباب الذي خرج منه هو الباب الذي يرجع منه مع إعانته
للسهادتين

“The avenue through which the apostate left Islām is the same avenue he must return through, in addition to reaffirming the two testimonies of faith.”

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللهُ says in *al-Fatāwā al-Kubrā* (3/535):

“According to the consensus of the leaders (i.e. the scholars) of Islām, it is obligatory to fight every group, even if they utter the testimony of faith, which exits from the *Sharī’ah* via any of the well-known and agreed upon rituals of Islām. Consequently, if they utter the two testimonies of faith but refuse to perform the five daily prayers, it is *Wājib* to fight them until they return to performing the prayer. If they refuse to pay the *Zakāh*, it is obligatory to fight them until they pay the *Zakāh*. Likewise, with those who refuse to fast during the month of Ramaḍān, or perform *Hajj*; or refuse to acknowledge the prohibition of lewdness, fornication, gambling, intoxicants, and other than these from the acts prohibited by the *Sharī’ah*.

Similarly, if they refuse to abide by the rulings regarding (the shedding of) blood, wealth, honour, amputation, and their likes from the Book (of Allāh) and the *Sunnah*. Also, if they abstain from enjoining good and forbidding evil, waging *Jihād* against the disbelievers until they embrace Islām or pay the *Jizyah* while they are in a state of humiliation. Additionally, if they display publically (any

major) innovation contradicting the Book, the *Sunnah*, and their followers from amongst the *Salaf* of this *Ummah*.”

All of the above, and the principle regarding the repentance of the apostate, revolves around the noble verses in *Sūrah Āl ‘Imrān* (3:86-89) wherein Allāh ﷻ says:

﴿كَيْفَ يَهْدِي اللَّهُ قَوْمًا كَفَرُوا بَعْدَ إِيمَانِهِمْ وَشَهِدُوا أَنَّ
الرَّسُولَ حَقٌّ وَجَاءَهُمُ الْبَيِّنَاتُ وَاللَّهُ لَا يَهْدِي الْقَوْمَ
الظَّالِمِينَ ﴿٨٦﴾ أُولَئِكَ جَزَاؤُهُمْ أَنَّ عَلَيْهِمْ لَعْنَةَ اللَّهِ
وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ ﴿٨٧﴾ خَالِدِينَ فِيهَا لَا يُخَفَّفُ عَنْهُمْ
الْعَذَابُ وَلَا هُمْ يُنْظَرُونَ ﴿٨٨﴾ إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ
وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ ﴿٨٩﴾﴾

How shall Allāh guide a people who disbelieved after their belief and had witnessed that the Messenger is true and clear signs had come to them? And Allāh does not guide the wrongdoing people. Those - their recompense will be that upon them is the curse of Allāh and the angels and the people, all together, Abiding eternally therein. The punishment will not be lightened for them, nor will they be reprieved, Except for those who repent after that and correct themselves.

Ibn Kathīr رحمه الله comments on the words, **and correct themselves** in his *Tafsīr*, saying that it means, “That, as much as he is able to, he rectifies whatever he violated (from the *Sharī’ah*).”²¹⁶

²¹⁶ This statement of ibn Kathīr is present in the original (unabridged) Arabic work, however it is not present in the translated and abridged English version published by Darrusalam

Scholars have however mentioned two exceptions to this general rule:

- 1) The first of them is the *Zindīq* (heretic), as his repentance is not apparent.²¹⁷ Ibn Qudāmah states that Mālik, al-Layth, Ishāq, and Abū Ḥanīfah according to one report, hold this view رَجَعَهُمُ اللَّهُ.²¹⁸
- 2) While the second is the one who repeats apostasy (more than once), and this is according to the verse in *Sūrah an-Nisā'* (4:137) wherein Allāh ﷻ says:

﴿إِنَّ الَّذِينَ ءَامَنُوا ثُمَّ كَفَرُوا ثُمَّ ءَامَنُوا ثُمَّ كَفَرُوا ثُمَّ ءَزَادُوا كُفْرًا ثُمَّ
يَكُنِ اللَّهُ لِيَغْفِرَ لَهُمْ وَلَا يَهْدِيَهُمْ سَبِيلًا﴾ (١٣٧)

Indeed, those who have believed then disbelieved, then believed, then disbelieved, and then increased in disbelief - never will Allāh forgive them, nor will He guide them to a way.²¹⁹

²¹⁷ The *Zindīq* (زندیق) is the hypocrite (منافق) [i.e. the one who displays Islām outwardly while concealing disbelief inwardly] whose hidden disbelief has become apparent through his statements or actions, however refuses to acknowledge his disbelief, but rather maintains that he is a Muslim. As such, the lying and deception of the *Zindīq* is even more severe than that of the *Munāfiq*.

²¹⁸ Refer to *al-Mughnī* (9/6), (7088)

²¹⁹ Refer to *al-Mughnī* (9/7), (7088)

CHAPTER 12

الأصناف الذين يقاتلون: البغاة

THE CATEGORIES OF PEOPLE FOUGHT (FOR THE SAKE OF ALLĀH): THE REBELS

The 'Rebels' (أهل البغي) are a group from amongst the Muslims combining three characteristics:²²⁰

- 1) They have rebelled against the legitimate authority of the (Islamic) state,²²¹ by way of refusing to fulfil their obligations, or with actions designed to overthrow the state.
- 2) They possess strength, coupled with the ability to deploy their strength in the commission of their transgression, thereby preventing the state from exercising authority over them and reining them in.

²²⁰ In this chapter, the terms *Ahl al-Baghī*, *al-Bughāh*, and *Rebels* will be used interchangeably

²²¹ It must be noted that when mention is made of the 'State', or 'Islamic State', it is in reference to the concept of the Islamic State, or Caliphate (الخلافة الإسلامية), not the fighting group present in Iraq, Syria, and a number of other places, that named itself *The Islamic State (IS)*

- 3) Dissent (الجروح): This term refers to what would be synonymous with, and encompasses contemporary terms such as; armed revolution, sectarian fighting, and civil war, taking up arms, or the use of violence to achieve political objectives.²²²

An-Nawawī رحمه الله in *Rawḍah aṭ-Ṭālibīn* (10/50) defines *al-Baghī*, in the terminology of the scholars, as being, “Dissent from the just ruler by rebelling from his obedience; refusing to fulfil his rights, or other than this.”

The majority of jurists state that the rebels (*Ahl al-Baghī*) have a cause originating from the *Sharī’ah* (although they have misunderstood it), citing the examples of the people of (i.e. the battles of) al-Jamal (the camel) and Ṣiffīn, who rebelled seeking the blood of the killers of ‘Uthmān رضي الله عنه.²²³ While those who

²²² This last phrase, ‘the use of violence to achieve political objectives’ used to be the West’s definition of ‘terrorism’. However, it proved to be too encompassing of a term for the West’s ‘War on Terror’, therefore they abandoned for a term(s) that would not frame them in the category of terrorists themselves. In more classic definitions, the term was used to define ‘War’ itself, as stated by Clausewitz: “War is the continuation of politics by other means.”

²²³ In the wake of ‘Uthmān’s murder, the relatives of ‘Uthmān رضي الله عنه demanded that before pledging allegiance to the new caliph, the murderers must be brought to justice. However, ‘Alī رضي الله عنه, the newly elected caliph, insisted that since those responsible for ‘Uthmān’s murder were a large group, he first needed to consolidate his authority before tackling them. As such, all of the Muslims should fall in line, pledge allegiance to him, and then cooperate in bringing the guilty party to justice.

Unfortunately, an agreement could not be reached, and due in large part to the plots of the hypocrites, and the disagreement ended in armed conflict between the two groups of believers - may Allāh be pleased with them.

For a detailed account of this turbulent period in early Islamic history, refer to Dr. ‘Alī M. *‘Alī ibn Abi Ṭālib*, volume 2, pp.19-250. For an account of the events leading up to the murder of the third of the Rightly Guided Caliphs, ‘Uthmān رضي الله عنه, refer to as-Sallābī’s, *The Biography of ‘Uthmān ibn ‘Affān رضي الله عنه*: *Dhun-Noorayn* (pp.433-610)

rebel without such a cause are dealt with, as far as their rulings go, as common criminals and bandits.

Ibn Qudāmah رَحِمَهُ اللهُ states in *al-Mughnī: Kitāb Ahl al-Baghī* (8/523-526) that, “Those who (unjustly) rebel against the ruler are of four types:

- 1) The first are those who rebel, undermining the authority of the ruler without an Islamically based justification. As a result, this group are deemed as bandits spreading corruption throughout the land.
- 2) The second are those who have a cause, (albeit unjustified) however their small numbers (such as one, two... ten) negate them from possessing any real strength or power (therefore, they are dealt with as the above group)... However, Abū Bakr said that ‘there is no difference between large or small numbers - their ruling is that same ruling as *al-Bughāh* if they rebel against the ruler.’
- 3) The third are the *Khawārij* who make *Takfīr*²²⁴ based on sins (less than *Kufr*), and made *Takfīr* on ‘Uthmān, ‘Alī, Ṭalḥah, az-Zubayr, and many others from the Companions رَضِيَ اللهُ عَنْهُمْ. They permit the blood and wealth of the Muslims, except those who rebel with them (i.e. join their ranks).

²²⁴ *Takfīr* (تَكْفِير) is the act of declaring a person to be a *Kāfir* (disbeliever) due to an action, statement, or belief that they hold. It is a must that the Muslim makes *Takfīr* on the disbelievers of origin, such as the Jews, Christians, idolaters, and so forth, also the one whose apostasy is without a doubt, such as the one who curses Allāh, His Messenger ﷺ, or leaves Islām for another religion. However, as for those Muslims who commit acts of *Kufr*, but whose cases are unclear to the majority of people, then it is upon the scholars (and not the layman) to clarify their case, and after having examined all of the preventative factors in relation to them, judge them accordingly.

The *Khawārij* are a deviant sect of Islām whose primary characteristic is that they unjustifiably make *Takfīr* on the Muslims due to major sins that do not reach the level of disbelieve, thus nullifying the Islām of the one who falls into one of them.

Abū Ḥanīfah, ash-Shāfi'ī, Mālik, the majority of the jurists, many from *Ahl al-Ḥadīth*, as well as our companions from the later scholars, viewed that their ruling is the same as *Ahl al-Baghī* (the rebels), and that they should be called to repent. However if they refuse, they should be killed due to their corruption, not because they have committed *Kufr*...

However a group from amongst *Ahl al-Ḥadīth* deemed them disbelievers and apostates, and that their ruling is the same as the apostates. Thus, their blood and wealth are permitted, and if they occupy a position in which they command power, they become *Ahl al-Ḥarb*, like the rest of the disbelievers (who do not have a covenant). Although, if they are under the authority of the ruler, he is to call them to repent in the same way as the apostate is called to repent. If they refuse, then their necks are to be struck (i.e. they are to be executed), their wealth becomes *Fay'*, and they do not inherit, nor are they inherited from by the Muslims...

Nevertheless, the vast majority of the scholars view them as *Bughāh*, and do not declare them disbelievers. Ibn Mundhir said, 'I do not know anyone who agrees with *Ahl al-Ḥadīth* in declaring them to be disbelievers and regarding them as apostates...' ²²⁵

²²⁵ Like many of the deviant sects, the *Khawārij* are not all the same; there have been groups of them throughout the ages that have indeed added the crime of apostasy to their initial innovation. Therefore, when one comes across rulings of scholars declaring them to be disbelievers, it is possible they are referring to one such group. Yet others have based their opinions on their understanding of the Prophet's ﷺ words in the following narrations to mean that they (i.e. the *Khawārij*) have left the religion of Islām. In *Ṣaḥīḥ al-Bukhārī: The Book of the Virtues of the Companions* (3611) and *Ṣaḥīḥ Muslim: The Book of Zakāh* (1066) he ﷺ said about them:

يَمْرُقُونَ مِنَ الدِّينِ مُرْزُوقَ السَّهْمِ مِنَ الرَّمِيَّةِ، لَا يَرْجِعُونَ حَتَّى يَرْتَدَّ عَلَى فُوقِهِ، هُمْ
شَرُّ الْخَلْقِ وَالْخَلِيقَةِ

- 4) While the forth group are from *Ahl al-Haqq* (i.e. the truthful Muslims belonging to the correct path) who challenge the authority of the ruler, believing that he should be dismissed because of a reasonable interpretation they hold (however they are mistaken). They also possess such force, that in order to quell their threat, it requires the mobilisation of the state's army.

Thus, these people are *al-Bughāh* in the same way as the other groups mentioned in this chapter are. It is *Wājib* upon the people to assist their leader in supressing the rebels mentioned at the beginning of this chapter, as if they desist from helping, then the rebels will indeed overcome him and great corruption will emerge in the land...”²²⁶

[End of ibn Qudāmāh quote]

“They will leave the religion as an arrow pierces through its target, and they will not return to it as the arrow does not return to its bow. They are the worst of creation.”

While in another narration in both *Ṣaḥīḥ al-Bukhārī: The Book to Make the Heart Tender* (6432) and *Muslim: The Book of Zakāh* (1067), he ﷺ said,

لَئِنْ أَدْرَكْتُهُمْ لَأَقْتُلَنَّهُمْ قَتَلَ عَادٍ

“Indeed if I were to meet them, then I would certainly kill them as the people of ‘Ād were killed.”

²²⁶ It is also possible to add a fifth group to the list, and they are *Ahl al-Ḥaqq*; who are justified according to the *Sharī’ah* in their rebellion against the ruler. This group will be discussed in the next chapter, by the permission of Allāh ﷻ

حكم قتال البغاة

THE RULING CONCERNING FIGHTING THE REBELS

The statement of Allāh ﷻ in *Sūrah al-Hujurāt* (49:9) presents the basis for fighting *al-Bughāh*:

﴿وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَاقْتُلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيَّ إِلَىٰ أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ﴿٩﴾﴾

And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allāh. And if it returns, then make settlement between them in justice and act justly. Indeed, Allāh loves those who act justly.

Imām al-Qurṭubī رحمه الله says in his *Tafsīr* (8/586) of the verse:

“The evidence that establishes the obligation of fighting the rebelling party (فئة الباغية) whose transgression against the ruler, or anyone of the Muslims, is apparent and well-known is within this verse, refuting those who unrestrictedly forbid fighting (other) believers, using as evidence the statement of the Prophet ﷺ:

أَلَا إِنَّ قِتَالَ الْمُؤْمِنِ كُفْرٌ

“Indeed, fighting a believer is Kufr.”²²⁷

Accordingly, if fighting the transgressing believer was disbelief, then how could Allāh command (us) with disbelief? Exalted is He above that! Indeed *aṣ-Ṣiddīq* fought those who held onto Islām but refused to pay the *Zakāh*. Although he ordered that their fleeing should not be pursued, neither their wounded finished off, nor wealth permissible, in contrast to the obligations regarding (fighting) the disbelievers.”²²⁸

Imām aṭ-Ṭabarī رحمه الله said, “If in every dispute between the two groups (i.e. the people of truth and the rebels) it was obligatory upon the believers to confine themselves to their dwellings, then falsehood and oppression would not be defeated, and for what purpose would the laws of the *Sharī’ah* have been established?

Additionally, the *Munāfiqīn* and shamelessly evil (*Fujjūr*) would have a way to make permissible everything that Allāh has prohibited them, from the wealth of the Muslims, their blood, and enslaving their women. As the Muslims would, (in fact) be (indirectly) supporting them by the virtue of them withholding their hands from (the wrongdoers). This is in clear opposition to the statement of the Messenger ﷺ:

²²⁷ The *Ḥadīth* is *Ṣaḥīḥ*, and is reported by *Sunan an-Nasā’ī: The Book of Fighting [The Prohibition of Bloodshed]* (4113), *Sunan ibn Mājah: The Book of the Sunnah* (46), and *Musnad Aḥmad* (1519). *Imām* Aḥmad رحمه الله said in *Uṣūl as-Sunnah*, “And in his saying ﷺ, ‘In whomsoever there are three (characteristics) he is a *Munāfiq*...’ is an intensification (in expression), [...] and (likewise is his ﷺ statement), ‘Cursing a Muslim is *Fisq* (wickedness) and fighting him is *Kufr* (disbelief).’” Meaning, these words are meant to emphasize the enormity of the act, and not an indication the act is one of *Major Kufr*. Refer to *The Foundations of the Sunnah* (pp.46-49)

²²⁸ This also serves as evidence that Abū Bakr رضي الله عنه did not make *Takfīr* on all those he fought for rebellion (amongst those who withheld the *Zakāh*), during the ‘Wars of Apostasy’, after the death of the Prophet ﷺ. Additionally, it is evident that the aim behind fighting the rebels is not to kill, but rather to subdue their evil using the minimum force necessary, until they return to the command of Allāh

خُذُوا عَلَىٰ أَيْدِي سَفَهَائِكُمْ

‘Take your foolish by their hands.’ ”

In *al-Mughnī: Kitāb Qitāl Ahl al-Baghī* (8/523) ibn Qudāmah رَحِمَهُ اللَّهُ states, “The Companions were united upon fighting the rebels, as indeed, Abū Bakr رَضِيَ اللَّهُ عَنْهُ fought those who withheld the *Zakāh*, and likewise ‘Alī رَضِيَ اللَّهُ عَنْهُ fought the people of al-Jamal, Šiffīn, and an-Nahrawān (the *Khawārij*).”

Likewise, ibn Taymiyyah رَحِمَهُ اللَّهُ said in *Majmū’ al-Fatāwā* (28/355), “...Allāh, the Exalted, has permitted killing those necessary for the rectification of the creation.”

تنبيه في القتال البغاة

NOTE REGARDING FIGHTING THE REBELS

In his *Tafsīr* (4/313-314) of the verse (8:39) ibn Kathīr رَحِمَهُ اللَّهُ mentions:

Allāh ﷻ said:

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ﴾

And fight them until there is no fitnah and [until] the religion [i.e., worship], all of it, is for Allāh.

Al-Bukhārī recorded that a man came to ibn ‘Umar رَضِيَ اللَّهُ عَنْهُ and said to him, “O Abū ‘Abd ar-Raḥmān! Why do you not implement what Allāh said in His Book, ***And if two***

parties (or groups) among the believers fall to fighting...
[49:9]

What prevents you from fighting as Allāh mentioned in His Book.” Ibn ‘Umar said, “O my nephew, I prefer that I be reminded with this verse rather than fighting, for in the latter case, I will be reminded by the verse in which Allāh, the Exalted and Most Honoured said, ***And whoever kills a believer intentionally...*** [4:93]”

The man said, “Allāh the Exalted said, ***And fight them until there is no fitnah.***” Ibn ‘Umar replied, “We did that during the time of the Messenger of Allāh ﷺ, when Islām was weak and a man would be tried in his religion, by either being tormented to death, or by being imprisoned. When Islām became stronger and widespread, there was no more *Fitnah*.”

When the man realized that ibn ‘Umar would not agree to what he is saying, he asked him, “What do you say about ‘Alī and ‘Uthmān.” Ibn ‘Umar replied, “What do I say about ‘Alī and ‘Uthmān! As for ‘Uthmān, Allāh has forgiven him, but you hate that Allāh forgives him. As for ‘Alī, he is the cousin of the Messenger of Allāh and his son-in-law,” and he pointed with his hand saying, “And that is his house over there.”

Sa’īd bin Jubayr said, “Ibn ‘Umar came to us and was asked, ‘What do you say about fighting during *Fitnah*.’” Ibn ‘Umar said, ‘Do you know what *Fitnah* refers to? Muḥammad ﷺ was fighting against the idolaters, and at that time, attending (or residing with) the idolaters was a *Fitnah* (trial in religion). It is nothing like what you are doing, fighting to gain leadership!’”

All these narrations were collected by al-Bukhārī, may Allāh the Exalted grant him His mercy. Aḍ-Ḍaḥḥak reported that Ibn ‘Abbās said about the verse, ***And fight them until there is no fitnah...*** “So that there is no more *Shirk*.” Similar was said by Abū al-‘Āliyah, Mujāhid, al-Ḥasan, Qatādah, ar-Rabī’ bin Anas, as-Suddī, Muqātil bin Ḥayyān and Zayd bin Aslam.

[End of ibn Kathīr quote]

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللهُ says in *Majmū’ al-Fatāwā* (4/535), “(It is incumbent we) acquit these people (i.e. those innocent of such accusations) from the fighting of the *Khawārij* who pierce through Islām as the arrow pierces through its target. As this group is to be found in much of the desires of the kings and leaders, who order (their followers with) fighting against them for (the sake of) their enemies, based on the (false) premise that they (i.e. the leaders) are the people of truth and justice, and those (i.e. the so-called ‘*Khawārij*’) are *al-Bughāh*. They are supported in their stance by their cliques from amongst the, according to their outward appearance, leading scholars, theologians, and Shaykh’s, who pretend that the truth and correct opinion is (exclusively) with them.

[...] This is the (type of) harm that one is unable to extract himself, which many of the scholars, leaders, and soldiers from the *Ummah* have fallen victim to [...] and we ask Allāh that He makes us from amongst the just, for indeed there is neither power nor might except with him.”

...

The purpose of mentioning these statements by ibn Kathīr and ibn Taymiyyah رَحِمَهُ اللهُ is highlight an important point - many unscrupulous ‘Muslim’ leaders, past and present, and even some leaders of *Jihādī* groups, commonly use the term *al-Bughāh*, or

Ahl al-Baghī to 'legitimize' their evil designs aimed at attacking their rivals from amongst the *Mujāhidīn*. It is a tragedy that many of the naïve and zealous youth are bamboozled by such false accusations and propaganda, proceeding to take up arms against their fellow believers under the auspices of such unfounded and blatant lies. It often being the case that those making such accusations and worthier, and indeed embody more of the attributes and characteristics of *al-Bughāh* than those they are slandering.

In addition, amongst many of the Muslims, the terms *Khawārij*, *Khārijī*, and *Ghulāt* (extremist) have become for them, what the terms *Terrorism* and *Terrorist* are to the West in their *War on Terror*. As such, once someone is labelled with such a term, with or without justification, then no questions are asked for fear of the questioner being labelled themselves as a *terrorist* (or *Khārijī*), or at very least a *sympathiser*. Consequently, the impermissible becomes permissible and divinely given rights are violated without accountability, ***and to Allāh do we belong, and to Him is our return!***

Indeed, the Messenger of Allāh ﷺ was truthful when he informed us:

لَتَتَّبِعَنَّ سُنَنُ مَنْ قَبْلَكُمْ شِبْرًا بِشِبْرٍ، وَذِرَاعًا بِذِرَاعٍ حَتَّىٰ لَوْ دَخَلُوا جُحْرًا
ضَبَّ لَدَخَلْتُمُوهُ قَالُوا يَا رَسُولُ اللَّهِ: الْيَهُودُ وَالنَّصَارَى؟ قَالَ: فَمَنْ؟

“You will most certainly follow the ways of those who came before you, hand span by hand span, until even if they should go into the hole of a lizard, you too will enter it.” They said, “O Messenger of Allāh! (Do you mean) the Jews and the Christians?” He replied, “Who else?”²²⁹

²²⁹ *Ṣaḥīḥ al-Jāmi' aṣ-Ṣaghīr* (5310), *Silsilah al-Aḥādīth aḍ-Ḍa'īfah* (2194) *al-Mishkāh* (4649). and also in similar narrations in *Ṣaḥīḥ Muslim: The Book of Knowledge* (2669) and *Sunan ibn Mājah: The Book of Tribulations* (3994)

الشروط المعتبر توفرها في البغاة

CONDITIONS FOR FIGHTING THE REBELS

Imām al-Māwardī رَحِمَهُ اللهُ says in *al-Hāwī al-Kabīr* (13/102), “The permissibility of fighting (*al-Bughāh*) because of their wrongdoing is firmly established, with what we have mentioned from the Book, the *Sunnah*, and the consensus. Nonetheless, fighting them rests on three agreed upon principles, and a fourth which has been differed over:

- 1) The first is that they possess force and pose a threat due to their (large) numbers...²³⁰
- 2) The second is that they have physically separated, occupying remote terrain and isolating themselves from the rest of the law-abiding Muslim population, and thus distinguishing themselves from others, such as the people of al-Jamal and Şiffin. However, if they are not isolated, but rather remain inseparable from the remainder of the population then they should not be fought.
- 3) The third is that they oppose the ruler due to a reasonable cause, like that of the people of al-Jamal and Şiffin, when they demanded the blood of ‘Uthmān رَحِمَهُ اللهُ (be avenged). However, if it becomes apparent they do not have such a cause, then they fall under the ruling of *al-Ḥarābah* and the bandits.²³¹

²³⁰ Although the *Fiqhī* principle, ‘the ruling revolves around the reason it was issued’ (الحكم يدور مع علته), could be used to extend this to other smaller groups that, due to their tactics or weaponry, have a greater impact than many larger groups, such as the *Hashashīn* (Assassin) order of the *Shi’a Ismā’īlī* sect in the middle ages, and Allāh knows best

²³¹ The basis for the ruling for *Ahl al-Ḥarābah* (أهل الحاربة) is found in the noble verse in *Sūrah al-Mā’idah* (5:33):

- 4) While the fourth, regarding which there is a difference of opinion, is that they have an appointed leader that they obey...²³²

متى يصير واجب قتال البغاة؟

WHEN DOES FIGHTING THE BUGHĀH BECOME OBLIGATORY?

Fighting the rebels becomes *Wājib* if any one of the following five conditions is present:

- 1) They disregard the sanctity of the upright Muslims, and generally corrupt their lives.
- 2) They are the cause of the suspension of *Jihād* against the disbelievers.
- 3) They usurp the wealth of the Muslims unjustly.
- 4) They resist fulfilling the duties that are obligatory upon them (such as paying the *Zakāh*).
- 5) They publically encourage the removal of the legitimate ruler, who has been sword allegiance (by the Muslim community), and who it is obligatory to obey.²³³

﴿إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خَلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ﴾

Indeed, the penalty for those who wage war against Allāh and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment

²³² Also refer to *at-Tāj wa'l-Iklīl* (6/274), *Nihāyah al-Muhtāj* (7/382,383), *Fath al-Qadīr* (4/414), *al-Hāshiyah ad-Dasūqī* (4/294), and others

Accordingly, if after being fought, they flee and security is restored, they disarm abandoning hostilities, they are outright defeated, or unable to continue fighting due to injury or capture, then it is impermissible for the Muslims to pursue them, or execute their wounded and prisoners, as security from their evil has been restored.

It is also not permissible to capture and enslave their women and children, or divide their wealth (as spoils), as is evident in the orders ‘Alī ibn Abī Ṭālib رضي الله عنه issued to his army, saying:

لا يقتل بعد الهزيمة مقل ولا مدبر، ولا يفتح باب، ولا يستحل فرج
ولا مال

“After their defeat, do not kill the fleeing or the one facing you. Do not (forcefully) open their doors, and neither their wealth, nor their women’s chastity is permissible for you.”

However, he رضي الله عنه said (to his army):

من اعترف شيئا فليأخذه

“Whoever recognises something may take it,” meaning whoever recognises his own property that the *Bughāt* had previously taken may reclaim it. Likewise, on the Day of the Camel he رضي الله عنه instructed:

²³³ Refer to *al-Ḥāwī al-Kabīr* (13/100-105), and *al-Mughnī: Kitāb Qitāl Ahl al-Baghī* (8/526&527)

Ibn Taymiyyah says *Majmū’ al-Fatāwā* regarding obedience to the ruler, “For the just *Imām*, obedience is obligatory in whatever is not known to be sin. (As for) the unjust, then obedience for him is only in what is known is (a righteous deed), such as *Jihād*...”

لا تتبعوا مدبرا، ولا تجهزوا على جريح، ولا تقتلوا أسيرا، وإياكم
والنساء

“Do not pursue the fleeing one, nor finish off the wounded, or execute the captive. And (fear Allāh) concerning the women.”

This is due to the reason for fighting them not being for the purpose of killing, but rather to repel their aggression and return them to the obedience [that is obligatory upon the Muslims to have to Allāh, the Messenger, and their rulers]. Therefore, it is not permissible for anyone to kill them intentionally except out of necessity.²³⁴

Ibn Qudāmah رَحِمَهُ اللهُ said in *al-Mughnī* (8/534), “We do not know of anyone from the people of knowledge who dispute regarding (the prohibition) of taking their wealth (through fighting), and capturing their women and children, as they are inviolable (due to their Islām). Consequently, it is only due to the necessity of fighting to repel them, that anything from their blood or wealth becomes permissible. While whatever does not fall within this (i.e. necessity) remains upon its original ruling of being inviolable.”²³⁵

Abu'l-Khaṭṭāb رَحِمَهُ اللهُ even goes as far to say that the wealth of the rebels taken on the battlefield (such as their weapons, vehicles, etc.) should not be distributed, but rather be set aside with a view to returning it to them once they have desisted from their corruption.²³⁶ He then quotes the *Ḥadīth* in which the Prophet ﷺ said:

لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا عَنْ طَيْبِ نَفْسٍ مِنْهُ

²³⁴ *Al-Madhhab* (2/218)

²³⁵ *Al-Mughnī* (7073)

²³⁶ Refer to *al-Mughnī* (7073)

“The wealth of a Muslim is not permissible, except for what he gives willingly.”²³⁷

In support of this view, there exist a number of narrations emphasising the sanctity of the Muslim, such as in *Ṣaḥīḥ Muslim: The Book of Righteousness, Joining the Ties of Kinship, and Good Conduct* (2564), wherein the Prophet ﷺ says,

كُلُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ حَرَامٌ، دَمُهُ، وَمَالُهُ، وَعَرَضُهُ

“... All things of a Muslim are inviolable to his brother in faith - his blood, his wealth, and his honour.”²³⁸

He ﷺ also said:

أُمِرْتُ أَنْ أَقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَيَقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ، عَصَمُوا مِنِّي دِمَاءَهُمْ، وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا، وَحِسَابُهُمْ عَلَى اللَّهِ

“I have been ordered to fight against the people until they testify that there is no deity worthy of worship except Allāh and that Muḥammad is the Messenger of Allāh, establish the prayer and give the zakāh. Then, if they do that, their blood and wealth will be protected from me - except in accordance with the right of Islām. And their reckoning will be with Allāh, the Exalted.”²³⁹

²³⁷ *Ṣaḥīḥ al-Jāmi'* (7662), and al-Albānī declared it authentic in *al-Irwā' al-Ghalīl* (1459)

²³⁸ Similar narrations are present in *Jāmi' at-Tirmidhī: The Book of Righteousness and Maintaining Good Relations with Relatives* (1927), *Sunan Abī Dāwūd: The Book of General Behaviour* (4882), and *Sunan ibn Mājah: The Book of Tribulations* (3933)

²³⁹ *Ṣaḥīḥ al-Bukhārī: the Book of Faith* (25), *Ṣaḥīḥ Muslim: the Book of Faith* (22), *Jāmi' at-Tirmidhī: the Book of Faith* (2608), *Sunan an-Nasā'ī: the Book of Jihād* (3090), *Sunan Abī Dāwūd: the Book of Jihād* (2642), *Sunan Ibn Mājah: the Book of the Sunnah* (75), *Musnad Aḥmad*, *al-Bayhaqī*, *Ibn Hibbān*, *al-Darqutnī*, and *Muwaṭṭa' Imām Mālik*

These narrations each serve to establish that the default ruling for the Muslim is that his blood, wealth, and honour, are all protected by virtue of his Islām, while it is only in specific circumstances that exemptions to this rule are permitted. The disbeliever is the opposite; in that his blood, wealth, and honour, are all permitted by default, and only prohibited in specific circumstances (such as by him entering into a covenant with the Muslims).²⁴⁰

Scholars such as ash-Shāfi'ī رحمه الله have mentioned some of the exceptions to the above regarding the Muslim. After mentioning the general impermissibility of pursuing the fleeing and killing the wounded and captives he says, "Except if they are regrouping for the purposes of persisting in their fight." Abū Ḥanīfah رحمه الله was known to also share this opinion. Likewise, ibn Qudāmah رحمه الله argues that if one fears from the *Khawārij*, fighting can be initiated against them, and their wounded and fleeing can be pursued, caught, and executed, if it is thought that they are manoeuvring, or retreating for the purposes of regrouping. Additionally, wealth taken from them on the battlefield out of necessity becomes permissible; however, it is not allowed to raid their homes.²⁴¹

In *Sharḥ Faṭḥ al-Qadīr* (6/104), ibn Humām رحمه الله outlines the *Hanafi* position, explaining, "It has been stipulated by them that if they have a group that they are retreating towards, then it is a must that the upright and just Muslims kill their fleeing and wounded. The reason for this is, if they are able to reach their reinforcements, then they will repeat (their aggression) against the law-abiding Muslims [...]. As for the statement of 'Alī

²⁴⁰ For more details on these principles and an explanation of the *ḥadīth*: "I have been ordered to fight against the people until they testify that there is no deity worthy of worship except Allāh..." refer to *Tawḥīd wa'l-Qitāl, Essay Regarding the Basic Rule of the Blood, Wealth and Honour of the Disbelievers, and Commentary on the Forty Hadith of al-Nawawi*, (1/417-430)

²⁴¹ Refer to *al-Mughnī* (8/353), (7072)

رَضِيَ اللَّهُ عَنْهُ, then it was according to the assumption that they did not have reinforcements.”

الَّذِينَ قُتِلُوا فِي قِتَالِ الْبَغَاةِ

THOSE KILLED WHILST FIGHTING AL- BUGHĀH

Are those who are killed whilst fighting the rebels considered martyrs, or not?

The scholars have differed as to the issue, with there being two opinions present within both the *Shāfi'ī* and *Ḥanbalī* schools.

Ibn Qudāmah رَضِيَ اللَّهُ عَنْهُ states in *al-Mughnī* (8/531), “If he was killed (whilst he was in the right) then he is a martyr, as he was killed whilst fighting according to the command of Allāh:

﴿فَقَاتِلُوا الَّذِينَ تَبَغَّوْا حَتَّى تَقِىَ إِلَى أَمْرِ اللَّهِ﴾

then fight against the one that oppresses until it returns to the ordinance of Allāh. ”²⁴²

This is also the position of the *Ḥanafī* School, who hold, “The martyr is the one who is killed, whether he dies immediately or subsequently, whilst fighting the disbelievers (who do not have a valid covenant), the rebels, or the bandits. However, whoever is killed by other than the enemy is not considered as a martyr.”²⁴³

²⁴² *Sūrah al-Hujūrāt* (49):9

Al-Mughnī (7070)

²⁴³ Refer to *al-Muḥīṭ al-Burhānī* (2/32), and *al-Fatāwā al-Hindiyyah* (1/167)

As for the washing, enshrouding, and funeral prayer upon the one who dies whilst fighting the rebels, according to the majority, and correct opinion - and Allāh knows best - is that there is neither washing nor praying upon the martyr (who is killed as a result of fighting). However, for those who do not consider him a martyr, then he is afforded the same burial rights any other Muslim would be.

الذين قتلوا من البغاة

THOSE KILLED FROM AMONGST THE REBELS

Mālik, ash-Shāfi'ī, and Aḥmad رَحِمَهُمُ اللَّهُ hold that they are to be washed and prayed upon in accordance with the narration attributed to the Messenger of Allāh ﷺ stating:

صَلُّوا عَلَى مَنْ قَالَ لَا إِلَهَ إِلَّا اللَّهُ

“Pray (the funeral prayer) upon whoever says, ‘There is no deity worthy of worship except Allāh.’”²⁴⁴

However, Abū Ḥanīfah رَحِمَهُمُ اللَّهُ argues they should not be afforded these rights, as a deterrent to others who might be otherwise be inclined to follow their example.

Although, if they are executed, as a prescribed punishment (*Ḥadd*) after having been subdued and brought to justice by the state, then they should be washed, shrouded, and prayed upon - and Allāh ﷻ knows best.²⁴⁵

²⁴⁴ Shaykh ibn Bāzz ruled that this narration was unauthentic in his *Fatwā*, which can be accessed [here](#)

²⁴⁵ As the believer who is punished for their crimes according to the dictates of the *Sharī'ah*, will have his sin expiated and not be accountable for it on the Day of Judgement

CHAPTER SUMMARY

The three categories of those whom the *Sharī'ah* permits fighting against for the rectification of Allāh's creation are:

- 1) The Disbelievers
- 2) The Apostates
- 3) The Rebels

CHAPTER 13

جواز عزل الإمام وخروج

عليه

INSTANCES WHEN IT IS PERMISSIBLE TO REVOLT AGAINST THE MUSLIM RULER²⁴⁶

After mentioning the characteristics of the rebels who unjustly revolt against the just ruler, it becomes incumbent to mention some of the instances when it is justified and permissible for the believers to revolt. This is particularly important, as today many so-called scholars harbour doubts themselves, or deliberately misguide the Muslims into thinking that every instance of revolt or rebellion against the ruler is transgression, with the participants being rebels or *Khawārij* deserving of being fought

²⁴⁶ This chapter is based upon the seventh lecture, *Ousting and Revolting against the Imām* (عزل الإمام وخروج عليه), in Shaykh Ḥārith an-Nadhārī's video series, *The Rules of Imārah* (أحكام الإمارة), released by al-Malahem Media (2016)

and denounced in the strongest terms. Some - and we ask Allāh ﷻ to guide us and them - even go as far as claiming that allying with the disbelievers in their ‘War Against Terror’ against such individuals or groups is justified, nay even obliged by Muslims.²⁴⁷

Amongst the narrations commonly quoted in support of this misguided stance, is the (general) prohibition of revolting against the Muslim ruler present in the *Hadīth* in *Ṣaḥīḥ Muslim: Book of Governance* (1847), wherein Ḥudhayfah ibn Yamān رَضِيَ اللَّهُ عَنْهُ narrates that the Prophet ﷺ said:

يَكُونُ بَعْدِي أَيْمَةٌ لَا يَهْتَدُونَ بِهَدَايَ، وَلَا يَسْتَنُونَ بِسُنَّتِي، وَسَيَقُومُ فِيهِمْ رِجَالٌ قُلُوبُهُمْ قُلُوبُ الشَّيَاطِينِ فِي جُثَمَانِ إِنْسٍ، قَالَ: قُلْتُ: كَيْفَ أَصْنَعُ يَا رَسُولَ اللَّهِ، إِنْ أَدْرَكْتُ ذَلِكَ؟ قَالَ: تَسْمَعُ وَتَطِيعُ لِلْأَمِيرِ، وَإِنْ ضَرَبَ ظَهْرُكَ، وَأَخَذَ مَالُكَ، فَاسْمَعْ وَأَطِعْ

“There will be leaders after me who will not be led by my guidance and who will not adopt my ways. There will be among them men who will have the hearts of devils in the bodies of humans.” I said, “O Messenger of Allāh, what should I do if I (happen) to live in that time?” He replied, “*You will listen to the leader and carry out his orders, even if your back is flogged and your wealth is snatched, you should listen and obey.*”

²⁴⁷ This is despite such an act representing a clear nullifier of Islām, as expounded upon by many of the scholars, past and present, in their commentaries on the verse in *Sūrah al-Mā'idah* (5:51), wherein Allāh ﷻ says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا الْيَهُودَ وَالنَّصَارَىٰ أَوْلِيَاءَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ وَمَنْ يَتَوَلَّهُمْ مِنكُمْ فَإِنَّهُ مِنَهُمْ﴾

O you who have believed, do not take the Jews and the Christians as allies. They are [in fact] allies of one another. And whoever is an ally to them among you - then indeed, he is [one] of them.

Shaykh ibn Bāzz in his *Fatāwā* (1/274) said, “The Muslim scholars have agreed that whomsoever aided (supported) the infidels against the Muslims and helped them in any way, then he is an infidel just as they are.”

However, like many other of the general rulings covered in this work, there are also exceptions to the general rule in this case. Amongst these exceptions are the instances it becomes permissible to revolt against the ruler and remove him from authority. These are:

الردة

APOSTASY

In *Ṣaḥīḥ al-Bukhārī: The Book of Tribulations* (7055&7056), and in *Ṣaḥīḥ Muslim: The Book of Governance* (1709), Janādah ibn Abū Umayyah رضي الله عنه narrated:

دَخَلْنَا عَلَى عُبَادَةَ بْنِ الصَّامِتِ، وَهُوَ مَرِيضٌ، قُلْنَا: أَصْلَحَكَ اللَّهُ، حَدَّثَ بِحَدِيثٍ يَنْفَعُكَ اللَّهُ بِهِ، سَمِعْتَهُ مِنَ النَّبِيِّ ﷺ، قَالَ: دَعَانَا النَّبِيُّ ﷺ فَبَايَعَنَا، (7056) - فَقَالَ فِيمَا أَخَذَ عَلَيْنَا: أَنْ بَايَعَنَا عَلَى السَّمْعِ وَالطَّاعَةِ، فِي مَنْشَطِنَا وَمَكْرَهِنَا، وَعُسْرِنَا وَيُسْرِنَا وَأَثَرَةً عَلَيْنَا، وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ، إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا، عِنْدَكُمْ مِنَ اللَّهِ فِيهِ بُرْهَانٌ

“We entered upon ‘Ubādah ibn as-Ṣāmit while he was sick. We said, ‘May Allāh make you healthy! Will you tell us a *ḥadīth* which you heard from the Prophet ﷺ, and Allāh may make you benefit (from it)?’ He said, ‘The Prophet ﷺ called us and we gave him the pledge of allegiance for Islām. Among the conditions upon which he took the pledge from us, was that we listen and obey both in the times we are active and the times we are tired, and at times of difficulty and ease. In addition, to be obedient to the ruler and to give him his rights even if he does not give us our rights, and not to rebel (fight) against him **unless we witness open disbelief from him, for which we will have a proof from Allāh.**”

Imām an-Nawawī رحمه الله in his commentary (4/1942) on the above narration, quotes *al-Qāḍī ‘Iyyāḍ* رحمه الله as saying, “The scholars have a consensus that the leadership is not to be given to a disbeliever, and that if (the ruler) becomes a disbeliever, he is to be ousted...”

He continues (4/1943), “Therefore, if he (i.e. the ruler) becomes a disbeliever, changes the *Sharī’ah*, or manifests an innovation warranting his removal, then he is not to be obeyed and it becomes *Wājib* for the Muslims to rise against, and oust him (from power), replacing him with a just ruler if they are able to do so. However, if this is not possible, except by a group of the Muslims, then it becomes *Wājib* upon them (specifically) to oust the disbeliever. While in the case of the innovator, it is not obligatory except if they believe they have the ability to do so. Therefore if it becomes evident that they lack the capability to revolt against (the innovator), then it becomes *Wājib* upon them to flee with their religion by making *Hijrah* to another land (in which innovation is not present and they can practice their religion freely).”²⁴⁸

ترك الصلاة

ABANDONING THE PRAYER

Leaving the prayer (as an individual), or abandoning the establishment of the prayer amongst the Muslims is the next instance requiring the removal of the ruler.

Despite the difference of opinion amongst some scholars pertaining to the ruling of disbelief upon the one who abandons the prayer, it nevertheless becomes *Wājib* to oust the ruler if he

²⁴⁸ *Al-Minhāj Sharḥ al-Jāmi’ aṣ-Ṣaḥīḥ* (4/1942&1943)

is guilty of this major sin (whether or not he is regarded as a disbeliever).

Evidence for this is established in the following narration recorded in *Ṣaḥīḥ Muslim: The Book of Governance* (1854), in which the Messenger of Allāh ﷺ said:

سَتَكُونُ أُمَرَاءُ فَتَعْرِفُونَ وَتُنْكِرُونَ، فَمَنْ عَرَفَ بَرِيءٌ، وَمَنْ أَنْكَرَ سَلِمَ،
وَلَكِنْ مَنْ رَضِيَ وَتَابَعَ قَالُوا: أَفَلَا نُقَاتِلُهُمْ؟ قَالَ: لَا، مَا صَلَّوْا

“In the near future there will be leaders and you will like their good deeds and dislike their evil deeds. One who sees through their bad deeds (and tries to prevent them with his hand or tongue), is absolved from blame, likewise is the one who hates their bad deeds (but is unable to change them). But the one who approves of their bad deeds and imitates them is ruined.” The Companions asked, *“Shouldn’t we fight against them (i.e. the rulers)?”* He ﷺ replied, *“No, as long as they pray.”*

In another narration reported by Muslim رَحِمَهُ اللَّهُ (1855), the Messenger of Allāh ﷺ said:

خَيْرُ أَيْمَتِكُمُ الَّذِينَ تُحِبُّونَهُمْ وَيُحِبُّونَكُمْ، وَيُصَلُّونَ عَلَيْكُمْ وَتُصَلُّونَ عَلَيْهِمْ، وَشِرَارُ أَيْمَتِكُمُ الَّذِينَ تُبْغِضُونَهُمْ وَيُبْغِضُونَكُمْ، وَتَلْعَنُونَهُمْ وَيَلْعَنُونَكُمْ، قِيلَ: يَا رَسُولَ اللَّهِ، أَفَلَا نُنَابِذُهُم بِالسَّيْفِ؟ فَقَالَ: لَا، مَا أَقَامُوا فِيكُمْ الصَّلَاةَ

“The best of your rulers are those whom you love and who love you, who invoke Allāh’s blessings upon you and you invoke Allāh’s blessings upon them. While the worst of your rulers are those whom you hate and who hate you, and whom you curse and who curse you.” It was asked, *“Shouldn’t we overthrow them with the sword?”* He replied, *“No, as long as they establish the prayer amongst you.”*

Al-Qāḍī ‘Iyyād says رَحِمَهُ اللهُ in *al-Minhāj* (4/1942), “The scholars have a consensus that the leadership is not to be given to a disbeliever, and that if (the ruler) becomes a disbeliever, then he is to be ousted, likewise if he abandons establishing the prayer and calling to it.”

الإعراض عن الحكم بما أنزل الله

THE ABANDONMENT OF RULING ACCORDING TO THE SHARĪ’AH

Like abandoning the prayer, there also exists a difference, albeit a contemporary one, amongst some of the scholars regarding whether abandoning ruling according to the *Sharī’ah* constitutes Major Disbelief (*Kufr al-Akbar*) - removing the doer from the fold of Islām - or Minor Disbelief (*Kufr al-Aṣghar*).²⁴⁹ In any case, like the ruler who abandons of the prayer, the scholars have agreed that if the ruler falls into this calamity, then it is obligatory to remove him.

In *Ṣaḥīḥ Muslim: The Book of Governance* (1838), the grandmother of Yaḥyā ibn Ḥusayn heard the Prophet ﷺ delivering a sermon during the Farewell Pilgrimage saying:

وَلَوْ اسْتُعْمِلَ عَلَيْكُمْ عَبْدٌ يَقُودُكُمْ بِكِتَابِ اللَّهِ، فَاسْمَعُوا لَهُ وَأَطِيعُوا

²⁴⁹ Amongst the differences between Major and Minor Disbelief is that the former causes the doer to exit the fold of Islām becoming an apostate, while the later does not. However, Minor Disbelief should not then be taken lightly, as any of the acts falling within this category are severer than the greatest of the Major sins. As such, the one guilty of Minor Disbelief is worse than the one who commits adultery with his mother inside of mosque - and we seek Allāh’s pardon and His protection from his displeasure

“If a slave is appointed over you and he conducts your affairs according to the Book of Allāh, you should listen to him and obey (his orders).”

Again, al-Qāḍī ‘Iyyāḍ رَحْمَةُ اللَّهِ عَلَيْهِ says, in *al-Minhāj* (4/1943), “Therefore, if he (i.e. the ruler) becomes a disbeliever, **changes the *Sharī’ah***, or manifests an innovation warranting his removal, then he is not to be obeyed and it becomes *Wājib* for the Muslims to rise against, and oust him (from power)...”

ناقص العقل

DETERIORATION OF THE MENTAL FACULTIES

The scholars have a consensus that leadership is not appointed to the insane or the mentally ill, and if the ruler’s mental faculties should deteriorate markedly, he should be removed.

Al-Māwardī رَحْمَةُ اللَّهِ عَلَيْهِ states in *al-Aḥkām as-Sulṭāniyyah* (p.43), “As for what excludes him from it (i.e. leadership), it may be either a loss of intellect or a loss of sight [...] that which carries on continually, unaccompanied by any respite: this would exclude a person from contracting and continuing the Imamate. Thus, if it occurs and has been verified and certified, the Imamate is annulled.”²⁵⁰

²⁵⁰ p.30 in the English translation of *al-Aḥkām as-Sulṭāniyyah*

فسق أو ظلم

TRANSGRESSION OR OPPRESSION

The scholars have differed over the permissibility of revolt against the transgressing or oppressive ruler, with their stances falling within three general opinions:

- 1) If the Muslims are capable, then it unrestrictedly obligatory.
- 2) If the Muslims (of a group from them) believe that they can remove him without it leading to an even greater *fitnah* (i.e. calamity) befalling the Muslims, then they should. However, if they suspect that the consequences of removing, or attempting to overthrow him will likely result in a greater evil than the one they are trying prevent, then it is not permissible.
- 3) It is impermissible

An-Nawawī رحمه الله, in *al-Minhāj* (4/1942) says, “As for revolting against and fighting them, even if they are transgressing oppressors, then by the consensus of the Muslims, it is impermissible (*Harām*)... *Ahl as-Sunnah* has agreed that the *Sulṭān* is not deposed due to transgression (*fisq*).”

In spite of this, he then goes on the following quote from al-Qāḍī ‘Iyyād رحمه الله (4/1943):

“The *Fāsiq* (transgressor) should not be appointed (over the Muslims if it is known beforehand that he is evil). However, if transgression becomes apparent from the Caliph, some say that it is obligatory to remove him unless it would lead to *Fitnah* and war.

The majority of *Ahl as-Sunnah*, from their jurists, experts in *Ḥadīth*, and theologians, say, ‘(the ruler) is not ousted due to transgression, oppression, or denying people their rights, and it is impermissible to revolt against him due to these things.’ Abū Bakr ibn Mujāhid رَحِمَهُ اللهُ cites a consensus on this fact.

However, a number (of scholars), due to the revolts of al-Ḥasan (ibn ‘Alī ibn Abī Ṭālib رَضِيَ اللهُ عَنْهُ) and ibn az-Zubayr (ibn al-‘Awwām رَضِيَ اللهُ عَنْهُ) along with the people of Madīnah against Banū Umayyah, have refuted him (and the claim of a consensus on the issue). Also, in light of ibn Ash’ath, along with a huge group from the foremost Successors revolting against al-Hajjāj (ibn Yūsuf ath-Thaqafī). Therefore, the explanation of the statement:

وَأَنْ لَا تُنَازِعَ الْأَمْرَ أَهْلَهُ،

‘and not to rebel (fight) against him,’²⁵¹ is referring (only) to the just ruler(s).”²⁵²

[End of an-Nawawī quote]

Al-Māwardī رَحِمَهُ اللهُ states in *al-Aḥkām as-Sulṭāniyyah* (p.42), “Two changes in a person’s state will exclude him from the Imamate: The first of these is a lack of decency [...] which is a moral deviation [...] (and they are) of two kinds: the first of them resulting from lust, and the second from his holding dubious opinions (i.e. innovations). As for the first, it is connected to physical action; he commits forbidden acts,

²⁵¹ This statement is from the *Ḥadīth* in *Ṣaḥīḥ al-Bukhārī: The Book of Tribulations* (7055&7056), and in *Ṣaḥīḥ Muslim: The Book of Governance* (1709) previously quoted on p.201

²⁵² Ibn Taymiyyah says in *Majmū’ al-Fatāwā* (29/196) about the just *Imām*, “Obedience to him is obligatory in all matters, except those which are known to be sins. Whereas the unjust (evil) *Imām* is only to be obeyed in matters which are known to be good deeds, such as *Jihād*.”

pursues evil, is ruled by his lust and is subject to his passions. This counts as a moral deviation that excludes him from taking up the Imamate, or from carrying on with it. Thus, if such behaviour befalls someone who has become the *Imām*, he is (to be) disqualified...”²⁵³

In any case, a number of contemporary scholars have correctly identified that the case the *Ummah* is dealing with today, is far from being simply a matter of mere transgression and oppression. Rather the issue currently facing the Muslims is one of disbelief and apostasy, in which the scholars of the *Salaf* did not differ upon the necessity in such situations of ousting the ruler, even if it meant swords were unsheathed.

²⁵³ pgs.29&30 in the English translation of *Aḥkām as-Sulṭāniyyah*

CHAPTER SUMMARY

The general ruling is that it is impermissible to oust the Muslim ruler, and those attempting to do so fall into the category of the criminals, or that of *al-Bughāh*. However, there are a number of exceptions to this general rule, and they are:

- 1) Apostasy (of the ruler)
- 2) Abandoning the establishment of the prayer
- 3) Not ruling according to the *Sharī'ah*
- 4) Mental illness
- 5) Transgression or oppression, over which the scholars have differed

Consequently, those who revolt against the ruler fall into one of three categories - the first two it being obligatory to support and side with the ruler, while in the third it is obligatory to side with and support the just against the ruler:

- 1) Criminals
- 2) *Al-Bughāh* (the Rebels)
- 3) *Ahl al-Ḥaqq* (i.e. those who are justified, or obliged to remove the illegitimate ruler)

CHAPTER 14

الذين لا يجوز قتلهم قصدا

من الكفار الحربيين

**THOSE WHO IT IS NOT ALLOWED TO
INTENTIONALLY KILL FROM
AMONGST THE ḤARBIYYĪN**

There are a number of categories of people generally impermissible to kill intentionally according to the *Sharī'ah*, the foremost amongst them being the Muslim. However, there are also a number of categories of people from amongst the disbelievers, despite lacking any covenant with the Muslims, who fall under the protection of the *Sharī'ah*. The first amongst them is:

النساء والصبيان والمجانين

WOMEN, CHILDREN, AND THE INSANE

The scholars have united upon the impermissibility of intentionally killing or targeting women, children, hermaphrodites,²⁵⁴ and the insane, except if they fight with word or deed.

Evidence for this is present in the following *Hadīth* collected in both *Ṣaḥīḥ al-Bukhārī: The Book of Jihād* (3015) and *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1744), in which ibn ‘Umar رَضِيَ اللَّهُ عَنْهُما narrates:

أَنَّ امْرَأَةً وُجِدَتْ فِي بَعْضِ مَغَازِي رَسُولِ اللَّهِ ﷺ مَقْتُولَةً، فَأَنْكَرَ رَسُولُ اللَّهِ ﷺ قَتْلَ النِّسَاءِ وَالصَّبِيَّانِ

“A woman was found killed in one of the battles, so the Messenger of Allāh ﷺ forbade the killing of women and children.”²⁵⁵

An-Nawawī رَحِمَهُ اللَّهُ says in his commentary, “The scholars have a consensus upon acting according to this *Hadīth*, and the prohibition of killing women and children if they do not fight. However if they fight, then according to the majority of scholars, they should be killed.”²⁵⁶

²⁵⁴ الخنثى المشكّل

This refers to the effeminate hermaphrodite, as opposed to those decidedly masculine in their appearance and/or behaviour

²⁵⁵ Similar narrations are also found in *Jāmi’ at-Tirmidhī: The Book of the Military Expeditions* (1569), *Sunan Abū Dāwūd: The Book of Jihād* (2668), and *al-Muwatta’*: *The Book of Jihād* (970)

²⁵⁶ *Al-Minhāj Sharḥ al-Jāmi’ aṣ-Ṣaḥīḥ* (4/1824)

Imām Abū ‘Abdullāh al-Azdī al-Qurṭubī رحمہ اللہ says in *al-Injād* (p.214), “As for the insane, even if adult, there should not be any differences that they are not to be killed as, by consensus they are not deemed responsible, and neither are the characteristics of the disbelievers present in hm.”

The majority of the scholars, such as Mālik, al-Layth, Abū Ḥanīfah, ath-Thawrī, al-Awzā’ī, ash-Shāfi’ī, Aḥmad, Ishāq, and others رحمہم اللہ, have agreed that if women and children fight they should be killed. Al-Ḥasan al-Baṣrī رحمہ اللہ states that, “If a women accompanies (the disbelievers) to *Dār al-Islām*, and fights with them, then she should be killed. Indeed, the Messenger of Allāh ﷺ killed (women) on the days of (Banū) Quraydhah and the Trench [...] and also on the day of the Conquest (of Makkah) two songstresses that used to satire the Messenger of Allāh.”²⁵⁷

Imām ibn Qudāmah رحمہ اللہ said in *al-Mughnī* (9/288):

“If a woman is present within the ranks of the disbelievers, stands upon their fortifications and insults the Muslims, or exposes herself (in an attempt to distract them), then it becomes permissible to intentionally target her.

‘Ikrimah رحمہ اللہ said that, ‘When the Messenger of Allāh ﷺ besieged the people of at-Ṭā’if, a woman approached (their battlements) and exposed her breasts (to the Muslims below). So (the Messenger of Allāh ﷺ) said, *There she is (in front of you), Shoot her!* So one of the Muslims fired at her, and it was not a mistake (that he shot her).’²⁵⁸

²⁵⁷ *Sharḥ Ṣaḥīḥ al-Bukhārī li ibn Baṭṭāl* (5/170)

²⁵⁸ *Marāsīl li-Abī Dāwūd: Bāb fī Faḍl al-Jihād* (334), p.247&248. In another narration it mentions:

فَمَا أَخْطَأَهَا أَنْ قَتَلَهَا

From this, (we can understand that) it is even permissible to look at her private parts due to the necessity of firing at her, as this is from the fundamentals of shooting (i.e. to look at one's target). Likewise, it is permissible to fire at her if she gathers arrows for them, serves them water, or incites them to fight, as then she falls within the ruling of the fighter(s). This is also the same ruling for the child, the elderly, or any others from those it is (usually) impermissible to kill from them (i.e. the disbelievers).”²⁵⁹

السيوف

THE ELDERLY

The scholars have differed over the permissibility of killing the elderly whose frail age prevents him from combat. Nevertheless, they have agreed that he is to be killed if he fights.

Evidence for the general prohibition is found in a *Ḥadīth* recorded by Abū Dāwūd in his *Sunan: The Book of Jihād* (2614), wherein Anas ibn Mālik رضي الله عنه narrated that the Prophet ﷺ would say:

انْطَلِقُوا بِاسْمِ اللَّهِ وَبِاللَّهِ وَعَلَى مِلَّةِ رَسُولِ اللَّهِ، وَلَا تَقْتُلُوا شَيْخًا فَإِنِّي
وَلَا طِفْلًا وَلَا صَغِيرًا وَلَا امْرَأَةً، وَلَا تَغْلُوا، وَضُمُّوا غَنَائِمَكُمْ، وَأَصْلِحُوا
وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ

“He was not wrong in killing her. (Later) the Messenger of Allāh ﷺ ordered that she be buried.”

²⁵⁹ *Al-Mughnī* (7578)

Chapter 14: Those who it is not Allowed to Intentionally Target from Amongst the Ḥarbiyyīn

“Go forth in Allāh’s name, trusting in Allāh, and adhering to the religion of Allāh’s Messenger. Do not kill a decrepit old man, an infant, a child, or a woman. Do not commit treachery with regards to the spoils (of war), but collect it (faithfully). Do right and act well, for Allāh loves those who do well.”²⁶⁰

The Shāfi’ī school, ibn al-Mundhir, and ibn Ḥazm رَحِمَهُمُ اللَّهُ however held that they should be killed whether they fight or not, according to what has been mentioned by Samurah ibn Jundub رَضِيَ اللَّهُ عَنْهُ, in which he reports that the Messenger of Allāh said ﷺ:

اقْتُلُوا شُيُوخَ الْمُشْرِكِينَ وَاسْتَبَقُوا شَرَحَهُمْ

“Kill the elderly polytheists, but spare their children.”²⁶¹

Additionally, in *Ṣaḥīḥ al-Bukhārī: The Book of the Military Expeditions Led by the Prophet ﷺ* (4323) Abū Mūsā رَضِيَ اللَّهُ عَنْهُ said:

لَمَّا فَرَغَ النَّبِيُّ ﷺ مِنْ حُنَيْنٍ بَعَثَ أَبَا عَامِرٍ عَلَى جَيْشٍ إِلَى أُوطَاسٍ،
فَلَقِيَ دُرَيْدَ بْنَ الصَّمَّةِ، فَقَتَلَ دُرَيْدًا وَهَزَمَ اللَّهُ أَصْحَابَهُ...

“When the Prophet ﷺ had finished the Battle of Ḥunayn, he sent Abū ‘Āmir at the head of an army to Awṭās. He (Abū ‘Āmir) met Durayd ibn aṣ-Ṣummah and killed him, and Allāh defeated his companions...”²⁶²

²⁶⁰ Al-Albānī classified the narration as weak in his *Da’iṭ Abī Dāwūd* (517)

²⁶¹ *Sunan Abī Dāwūd: The Book of Jihād* (2670), *Jāmi’ at-Tirmidhī: The Book of Military Expeditions* (1587), and *Musnad Aḥmad* (20157). At-Tirmidhī classified the ḥadīth as *Ḥasan Ṣaḥīḥ*, however al-Albānī differed, declaring it weak in his *Da’iṭ Abī Dāwūd* (459)

²⁶² In his *Sīrah*, Ibn Kathīr relates from ibn Ishāq about him (3/438), “Among Banī Jusham there was Durayd ibn aṣ-Ṣummah, an elderly Shaykh who was capable of giving advice and conveying his knowledge of warfare; he was a man of very great experience.”

Imām al-Kasānī رَحِمَهُ اللهُ says that it was narrated, “That Rabi’ah ibn Rabī’ as-Sulamī رَحِمَهُ اللهُ met Durayd ibn aṣ-Ṣūmmah on the day of Ḥunayn and killed him, and he was an old frail man of no benefit to others, except with his opinion. When it was conveyed to the Messenger of Allāh ﷺ, he did not disapprove.”²⁶³

In addition, Ibn Humām رَحِمَهُ اللهُ in *Sharḥ Faṭḥ al-Qādir* (5/435), quotes Shaykh Abū Bakr ar-Rāzī رَحِمَهُ اللهُ as saying, “The one who we do not kill is the decrepit old man whose senility has caused his mental capacities to cease functioning (properly). (Therefore,) at such a time, he occupies the same status as the insane, and as such is not killed even if he were to apostate.”

الرهبان

MONKS

The jurists have differed as to the case of monks who live in seclusion. According to the majority of scholars from the four major schools, it is not permissible to kill, if they do not contribute with their opinions or plot against the Muslims, those monks who seclude themselves from the outside world. However, they agree that if they mix with the population, fight,

²⁶³ *Bidā’ aṣ-Ṣinā’i’* (7/101). Also refer to *al-Ḥawī al-Kabīr* (14/192), and *al-Bidāyah wa’n-Nihāyah; the Battle of Ḥawāzin, the Day of Hunayn* (4/3&4), wherein the conversation, that took place between Durayd and Mālik ibn ‘Awf (the head of Ḥawāzin) before the battle, regarding the military tactics to be employed in the battle, is detailed. The incident is also mentioned in the biographical accounts such as *The Sealed Nectar* (pgs.403-404), *Provisions for the Hereafter (Abridged)* (p.401), *The Noble Life of the Prophet* ﷺ (pgs.1751-1752), and ibn Kathīr’s *The Life of the Prophet Muhammad* (3/438-439), who’s account will be narrated in the Appendix, by Allāh’s permission

or incite the disbelievers against the Muslims they should be killed.

Ibn ‘Arafah al-Mālikī رحمته الله says, “The prohibition on killing monks and those like them is not due to the virtue of their worship - rather they are further from Allāh than others owing to the severity of their disbelief. When they disassociated themselves (from the people), their fellow disbelievers disassociated themselves from them, thus they became like women (in regards to the harm they pose to the Muslims).” ²⁶⁴

However, an-Nawawī رحمته الله states, “As for the elderly disbelievers, they should be killed if they (contribute towards the fighting) with their advice. (If they do not do this) there is a difference of opinion with regards to them and monks. Mālik and Abū Ḥanīfah hold that they are not to be killed, however, the correct opinion according to the Shāfi’ī school is that they should be killed.” ²⁶⁵

Likewise, al-Khaṭīb ash-Sharbīnī رحمته الله says, “(and it is permissible to kill the monk and the labourer) and the professional (and the old) even if they are weak. (Also the blind and the disabled) and the amputee, even if they are not present within the ranks (of the disbelieving fighters), (and do not fight, nor apparently advise) due to them being free and responsible adults, in addition to the generality of the statement of the Most High, ***Then kill the polytheists***. Thus, it is permissible to kill them, as it is with others than them.” ²⁶⁶

²⁶⁴ *Hāshiyah al-‘Udwī* (6/9), *Hāshiyah ad-Dasūqī* (2/176), and *Manah al-Jalīl* (3/146)

²⁶⁵ *Al-Injād* (p.226), and *al-Minhāj Sharḥ al-Jāmi’ aṣ-Ṣaḥīḥ* (4/1824)

²⁶⁶ *Al-Mughnī al-Muḥtāj* (6/30)

Ibn Qudāmah رَحْمَةُ اللَّهِ عَلَيْه says in *al-Mughnī* (9/313), “(Whoever from the women, elderly, and monks fights in battle,) we do not know of any difference of opinion regarding killing them.”²⁶⁷

In *Majmū' al-Fatāwā* (28/660-663) *Shaykh al-Islām* ibn Taymiyyah رَحْمَةُ اللَّهِ عَلَيْه said:

“The scholars agree that the monk who assists his co-religionists with his hand and tongue, and with the likes of those experts who are consulted concerning the affairs of war, or he incites them in one way or the other is to be killed. If he falls under the authority of the Muslims or is captured alone in his monastery, the *Jizyah* can be taken from him.

So how then about the one who, in respect to his life, mixing and interacting with the people, desire for acquiring wealth through business, agriculture, production, and the acquisition of property [...] is just like the rest of the Christians. With the only thing separating him from the rest of the people is his position of authority amongst the disbelievers, stemming from his severity in disbelief, such as his devotion to the tarnished, abandonment of marriage, corpulence, and his adornment with his robes of disbelief...?

These are the ones who have adopted the misguided religion of the Christians; according to their apparent deceptions such as their corrupt forms of worship, and the acceptance of their so-called scholars and priests' fabricated vows and abstinences. The only condition they stipulate in order to be recognised as a monk, a priest, and others like them from the leaders of disbelief who prevent people from fulfilling their obligations and abstinence

²⁶⁷ *Al-Mughnī* (7614)

from the prohibitions, is solely their abandonment of marriage...

Consequently, the scholars have not disagreed on the fact that these are the very ones from amongst the Christians most deserving of having the *Jizyah* taken from in a state of peace, or of being killed (for their disbelief in a state of war). They are the very heads of disbelief *aṣ-Siddīq* (ﷺ) referred to when he recited the verse of the Exalted:

﴿فَقَاتِلُوا أَمِيَّةَ الْكُفْرِ إِنَّهُمْ لَا أَيْمَنَ لَهُمْ لَعَلَّهُمْ
يَنْتَهُونَ﴾²⁶⁸

Then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease.²⁶⁸

Allāh further clarifies this when He says:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّ كَثِيرًا مِّنَ الْأَحْبَارِ وَالرُّهْبَانِ لِيَآكُلُونَ
أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَيَصُدُّونَ عَن سَبِيلِ﴾

O you who have believed, indeed many of the scholars and the monks devour the wealth of people unjustly and avert [them] from the way of Allāh.²⁶⁹

²⁶⁸ *Sūrah at-Tawbah* (9):12

Ibn Kathīr narrates in his *Tafsīr* of the verse, “Al-Walīd bin Muslim said that Safwān bin ‘Amr narrated that ‘Abd ar-Raḥmān bin Jubayr bin Nufayr said that when Abū Bakr (ﷺ) sent an army to *ash-Shām*, he advised them, ‘You will find some people with shaved heads. Therefore, strike the swords upon the parts that contain the devil, for by Allāh, it is better to me to kill one of these people than to kill seventy other men. This is because Allāh said, ***then fight the leaders of disbelief.***’ Ibn Abī Ḥātim collected it.”

And:

﴿اتَّخَذُوا أَحْبَارَهُمْ وَرُهَبَانَهُمْ أَرْبَابًا مِّن دُونِ اللَّهِ وَالْمَسِيحَ
ابْنَ مَرْيَمَ وَمَا أُمُّرُوا إِلَّا لِيَعْبُدُوا إِلَهًا وَاحِدًا ۚ لَا إِلَهَ
إِلَّا هُوَ سُبْحَانَهُ عَمَّا يُشْرِكُونَ ﴿٣١﴾﴾

They have taken their scholars and monks as lords besides Allāh, and [also] the Messiah, the son of Mary. And they were not commanded except to worship one God; there is no deity except Him. Exalted is He above whatever they associate with Him. ²⁷⁰

So how could the knowledgeable one say that these heads of disbelief, who prevent mankind from the religion of Allāh, unjustly consume the wealth of the people, and are pleased that they be taken as lords besides Allāh, not be fought, and neither the *Jizyah* be taken from them. Despite the fact that taking the *Jizyah* from those less in wealth, and less in harm to the religion, has been firmly established...?"

[End of ibn Taymiyyah quote]

In *al-Mughnī* (8/414) ibn Qudāmah رَحِمَهُ اللَّهُ says, "As for the killing of the women and children from the disbelievers (*Ahl al-Ḥarb*), there is no compensation to be paid. This is because they are not from those who have belief (in Allāh), neither are they from those who have any covenant of safety. Therefore, the only reason for the prohibition of their killing is because of their benefit to the Muslims once they fall into captivity and are enslaved by the Muslims..." ²⁷¹

²⁶⁹ *Sūrah at-Tawbah* (9):34

²⁷⁰ *Sūrah at-Tawbah* (9):31

²⁷¹ *Al-Mughnī* (7050)

Chapter 14: Those who it is not Allowed to Intentionally Target from Amongst the Ḥarbiyyīn

Suḥnūn رحمه الله elaborates on this in *Mawāhib al-Jalīl* (3/351) saying, “Whoever (intentionally) kills those prohibited to kill, such as the child, the women, or the senile in *Dār al-Ḥarb* before they fall into the hands of the Muslims as *Ghanīmah* - he should seek Allāh’s forgiveness. However, if they are killed after having become the property of the Muslims, then he must return their price into the *Ghanīmah*...”²⁷²

²⁷² Refer to at-Tibyān Publications’, *The Clarification Regarding Intentionally Targeting Women and Children*, for further details regarding the topic covered in this chapter

CHAPTER SUMMARY

Those whom it is prohibited to intentionally kill from amongst the disbelievers, assuming they do not fight against the Muslims with word or deed, are:

- 1) Women, Children, and the Insane
- 2) The (Decrepit) Elderly
- 3) Monastic Monks (i.e. those who seclude themselves in their places of worship)

CHAPTER 15

جواز قتل النساء والصبيان والشيوخ والرهبان وغيرهم تبعاً لأقصاداً

INSTANCES WHEN IT IS PERMISSIBLE TO KILL WOMEN, CHILDREN, THE ELDERLY, MONKS, AND OTHERS

The scholars have agreed as to the permissibility in certain circumstances of unintentionally killing women, children, the elderly, and monks during war. Amongst these instances are:

التبیت أو البیات أو الإغارة NIGHT ATTACKS AND RAIDS ²⁷³

In *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1745), *Imām* Muslim narrates from Ṣa'b ibn Juthāmah رَضِيَ اللَّهُ عَنْهُ, who said:

سُئِلَ النَّبِيُّ ﷺ عَنِ الذَّرَارِيِّ مِنَ الْمُشْرِكِينَ؟ يُبَيِّتُونَ فَيُصِيبُونَ مِنْ نِسَائِهِمْ وَذُرَارِيِّهِمْ، فَقَالَ: «هُمْ مِنْهُمْ»

“The Prophet ﷺ, when asked about the women and children of the polytheists being killed during the night raid said, ‘they are from them.’

Also, in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād* (3012), Ṣa'b ibn Juthāmah رَضِيَ اللَّهُ عَنْهُ narrates:

مَرَّ بِي النَّبِيُّ ﷺ بِالْأَبْوَاءِ، أَوْ بَوْدَانَ، وَسُئِلَ عَنْ أَهْلِ الدَّارِ يُبَيِّتُونَ مِنَ الْمُشْرِكِينَ، فَيَصَابُ مِنْ نِسَائِهِمْ وَذُرَارِيِّهِمْ قَالَ: هُمْ مِنْهُمْ

“The Prophet ﷺ passed by me at a place called al-Abwa’ or Waddān, and was asked whether it was permissible to attack the pagan warriors at night (in their homes) with the probability of exposing their women and children to danger. The Prophet ﷺ replied, ‘They are from them (i.e. the pagans).’ ²⁷⁴

²⁷³ The raid refers to the surprise attack on the enemy which is characterised by its speed and violence (of action)

²⁷⁴ Similar narrations are also in *Sunan Abī Dāwūd: The Book of Jihād* (2672), and *Sunan ibn Mājah: The Book of Jihād* (2839)

In *Sunan Abī Dāwūd: The Book of Jihād* (2672), az-Zuhrī (one of the sub-narrators of this *ḥadīth*) says at the end of the narration, “After that the Messenger of Allāh ﷺ prohibited the killing of women and children.” In ‘Awn al-Ma’būd (7/238) ibn Ḥajar al-‘Asqalānī is quoted as saying in *Fath*, “Az-Zuhrī is indicating that the narration may be abrogated. (And likewise)

Imām an-Nawawī رحمه الله said about this *Ḥadīth* in *al-Minhāj* (4/1825), “This *Ḥadīth* [...] establishes the permissibility of attacking the disbelievers at night wherein their women and children are killed. This is our position, and (likewise) the position of Mālik, Abū Ḥanīfah, and the majority of scholars.” He continues, explaining the night attack is, “The raid conducted at night wherein the women and children are undistinguishable from the men ...”

Thus, it would appear that according to the principle of ‘the ruling revolving around the reason for issuing it,’²⁷⁵ the night raid in which the *Mujāhidīn* are able to distinguish men from women and children. Due to the use of lights, thermal, or night vision optics, would not contain any permission to kill such people if they could reasonably be avoided, and Allāh ﷻ knows best.

Imām ash-Shirāzī رحمه الله says in *al-Madhhab* (2/234), “If the catapult is employed, or they are raided by night, and amongst them are women and children, it is permissible. (This) can be seen from the narration of ‘Alī رضي الله عنه (wherein) the Prophet ﷺ employed the catapult against the people of Ṭā’if, and it was not possible to differentiate between (their fighters and) their women and children.” After mentioning the preceding narration of Ṣa’b ibn Juthāmah رضي الله عنه he continues, “Because the disbelievers do not separate from their women and children, and if we then were to abandon firing at them for the sake of their women and children, then the *Jihād* would come to a halt.”

can be used by those who say that it is not permissible to kill women and children unrestrictedly.” Likewise, scholars have said that this means that the Prophet ﷺ forbade the intentional targeting of women and children, however if they happen to be killed inadvertently in such instances wherein it is not possible to distinguish them from the fighters the prohibition does not apply. In addition, al-Albānī graded the narration as *Ṣaḥīḥ* with the exception of az-Zuhrī’s addition.

²⁷⁵ الحكم يدور مع علته

The catapult of the Prophet's ﷺ era may be likened to many contemporary heavy weapons; tanks, artillery, rockets, missiles, mortars, and their likes. In fact, it is expected that most modern heavy weapons, along with their increased destructive capabilities, would still possess higher levels of accuracy than their ancient predecessors, and Allāh ﷻ knows best. Therefore, the *Mujāhidīn* that specialise in operating such weapons systems are required to precede their work in the field with the relevant knowledge regarding the rulings related to their specific military fields, according to the principle:

العلم قبل القول والعمل

‘Knowledge precedes speech and action.’^{276 277}

Ibn al-Qāsim رَحِمَهُ اللهُ said in his commentary, “And it is permitted to fire upon the disbelievers with catapults, even if women,

²⁷⁶ Refer to the introduction of Shaykh Muḥammad ibn ‘Abd al-Wahhāb’s *The Three Fundamental Principles*

²⁷⁷ A small number of contemporary scholars have attempted to claim that the narrations in which document the Prophet’s ﷺ employment of the catapult (mangonel) against the people of at-Ṭā’if are unauthentic, and thus are any analogies made likening the catapult of the Prophet’s ﷺ era to any of the modern types of heavy weaponry. Consequently, they seek to undermine the legitimacy of the *Mujāhidīn*’s tactics against the aggressing disbelievers.

However, perhaps these contemporary scholars are unaware of the consensus cited by ibn Rushd in *Bidāyah al-Mujtahid* (1/185&386), wherein he states, “The jurists are all united upon the permissibility of using catapults to strike the fortresses of the disbelievers, regardless of whether or not their women and children are present...”

Not only that, but they also pretend to forget that the corrupt governments that pay their wages and command them to issue such false rulings attempting to refute discredit the *Mujāhidīn*, make it their business to fill the war-coffers of the enemies of Allāh by purchasing the very same, and even more destructive types of weapons.

Although, unlike the *Mujāhidīn* who direct their weapons at the disbelievers, these tyrannical governments direct their weapons almost exclusively at the Muslims, whom their masters from amongst the disbelievers have labelled as terrorists - and to Allāh do we complain!

children, the elderly, and monks are killed unintentionally, due to the consensus (*Ijmā'*) concerning the permissibility of terrorising them. Ibn Rush said, 'Terrorising is permitted by *Ijmā'* against all types of disbelievers.'" ²⁷⁸

Indeed, Shaykh 'Abdullāh 'Azzām رَحِمَهُ اللهُ said, "Yes, we are terrorists, and terrorism is an obligation in the Book of Allāh and the *Sunnah* ... Let the East and West know that we are terrorists, and that we terrorise (Allāh says):

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ
بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ﴾

And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allāh and your enemy...

As such, terrorism is an obligation according to the *Dīn* of Allāh (i.e. Islām)" ²⁷⁹

Ibn 'Abd al-Barr رَحِمَهُ اللهُ said, "It is from the *Sunnah* of the Messenger of Allāh ﷺ to raid the polytheists both at night, and at dawn. The Rightly Guided Caliphs²⁸⁰ also acted according to this *Sunnah*..." ²⁸¹

Imām an-Nawawī رَحِمَهُ اللهُ said, "And it is permissible to besiege the disbelievers in their fortresses, to drown them [if they are on ships], to attack them with fire and catapults, and to raid them at

²⁷⁸ A-Ḥāshiyah 'alā ar-Rawḍ (4/270), in *The Clarification Regarding Intentionally Targeting Women and Children* (pgs.28-29)

²⁷⁹ Access the video clip [here](#)

²⁸⁰ The Rightly Guided Caliphs were: Abū Bakr aṣ-Ṣiddīq, 'Umar ibn al-Khaṭṭāb, 'Uthmān ibn 'Affān, and 'Alī ibn Abī Ṭālib, may Allāh be pleased with them all

²⁸¹ *Bidā'i' aṣ-Ṣanā'i'* (7/101)

night whilst they are unaware.” *Imām ash-Sharbīnī* رَحِمَهُ اللهُ said in his explanation of the above statement from an-Nawawī, “and to attack them with fire and catapults - and this also includes demolishing their homes, and throwing snakes and scorpions upon them - even if there are women and children amongst them.”²⁸²

Imām ash-Sharbīnī is referring to here, when he mentions “throwing (venomous) snakes and scorpions upon them,” what in today’s terms would fall within the category of NBC (Nuclear, Biological, and Chemical) weapons - and Allāh knows best.

Imām Aḥmad ibn Ḥanbal رَحِمَهُ اللهُ said, “There is no problem in carrying out night attacks... are the Romans attacked in any other way?” He also said, “We do not know anyone who is averse to raiding the enemy by night.”²⁸³

الترس

HUMAN SHIELDS

KILLING OF HUMAN SHIELDS FROM AMONGST THE WOMEN, CHILDREN, THE ELDERLY OF THE DISBELIEVERS, AND WHOEVER SHARES THEIR RULING

The scholars have differed regarding the instances wherein the disbelievers take their women, children, and those generally prohibited to kill intentionally as human shields.

²⁸² *Mughnī al-Muḥtāj Sharḥ al-Minhāj* (9/72), in *The Clarification Regarding Intentionally Targeting Women and Children* (p.29)

²⁸³ *Al-Mughnī* (9/287), (7575)

Chapter 15: Instances when it is Permissible to Kill Women, Children, the Elderly, Monks, and Others

The *Ḥanafī*, *Ḥanbalī*, and *Shāfi'ī* schools hold that human shields (from amongst the disbelievers) can be killed unconditionally, without requiring there be a necessity to do so.²⁸⁴

Ibn Qudāmah رحمته الله rules in *al-Mughnī* (9/288&289):

“It is permissible to fire at the disbelievers during war with the intention being their fighters, even if they use women and children as human shields. This is due to the Prophet ﷺ firing at them with the catapult, while amongst them were women and children.

Thus, if the Muslims refrain from (attacking) them, and the disbelievers realize that if they use human shields the *Jihād* will be suspended, then this will lead (eventually) to an abandonment of *Jihād* altogether. As such, the ruling (on the permissibility of attacking the disbelievers despite their use of human shields) is effective whether there is on-going hostilities, or during a pause (in fighting).

(This is evident) as when the Prophet ﷺ fired (upon at-Ṭā'if) he was not in a state of all-out war, (with the people of at-Ṭā'if, rather he was besieging them in their fortresses after the remnants of Ḥawāzin fled there after their rout at Ḥunayn).”²⁸⁵

He continues:

“And if they use Muslims as human shields but there does not exist a need to fire at the enemy, as the war is not raging or it is possible to overcome them through other

²⁸⁴ Refer to *Sharḥ Ma'ānī al-Āthār* (3/222&223), *Umdah al-Qārī* (14/261), *Sharḥ Ṣaḥīḥ al-Bukhārī li'ibn Baṭṭāl* (5/169)

²⁸⁵ What in today's military terminology would be referred to as a Pursuit/Exploitation operation

means, then it is not permissible to fire upon them. Consequently, if they are engaged (fired upon) and a Muslim is hit, then the one who fired is held accountable.²⁸⁶ However, if there exists a necessity to engage the disbelievers, such as (a genuine) fear that the remainder of the Muslims will be harmed, then it becomes permissible to fire as this is a situation of necessity, coupled with the intention to hit (only) the disbelievers. Although, if there is no fear for the Muslims, but it nevertheless remains the only way to triumph over the enemy, then al-Awzā'ī and al-Layth say, 'It is not permissible to fire (in such a situation), as Allāh says:

﴿وَلَوْلَا رِجَالُ الْمُؤْمِنِينَ وَالنِّسَاءُ الْمُؤْمِنَاتُ لَمْ تَعْلَمُوهُمْ أَنْ تَطَّوَّهُمْ فِتْصِيْبَكُمْ
مِنْهُمْ مَعْرَةً بِغَيْرِ عِلْمٍ لِيَدْخُلَ اللَّهُ فِي رَحْمَتِهِ مَنْ يَشَاءُ لَوْ تَزَيَّلُوا
لَعَذَّبْنَا الَّذِينَ كَفَرُوا مِنْهُمْ عَذَابًا أَلِيمًا﴾

*... and if not for believing men and believing women whom you did not know - that you might trample [i.e., kill] them and there would befall you because of them dishonour without [your] knowledge - [you would have been permitted to enter Makkah]. [This was so] that Allāh might admit to His mercy whom He willed. If they had been apart [from them], We would have punished those who disbelieved among them with painful punishment.*²⁸⁷

²⁸⁶ However, this assumes that he knew of the presence of Muslim human shields in the target area (as many contemporary heavy weapons are of the indirect fire type - wherein the actual crew operating the weapon system likely cannot see their target(s), but rather are directed by Forward Observers). If this were not the case, then the responsibility would lay with the Forward Observers failure to report the presence of Muslim human shields in the target area, the *Amīr* responsible for giving the order to fire, or the *Amīr* responsible for setting the engagement criteria for the operation, and Allāh ﷻ knows best.

²⁸⁷ *Sūrah al-Fath* (48):25

Al-Layth says, ‘Abandoning a fortified position of the enemy that the Muslims are capable of conquering, is better than a Muslim be killed without right.’

Al-Qāḍī and ash-Shāfi‘ī said, ‘It is permissible to fire at them if the battle is raging, as abandoning it will lead to the abandonment of *Jihād*. However, with this is the fact that if a Muslim is killed, the shooter [i.e. the one responsible] is required to make atonement.

Concerning the blood money there are two opinions: The **first**, is that it is *Wājib* to pay, as he has killed another Muslim, albeit unintentionally, and therefore falls under the ruling of the verse:

﴿وَمَنْ قَتَلَ مُؤْمِنًا خَطَا فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ
إِلَىٰ أَهْلِهِ﴾

*And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment [diyah] presented to his [i.e., the deceased's] family [is required]...*²⁸⁸

While the **second** opinion is that there is no blood money due from whoever is responsible, as the Muslim was killed in *Dār al-Ḥarb* by permissible fire, and as such falls under the implication of the verse, which does not make any mention of blood money:

﴿فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ
مُّؤْمِنَةٍ﴾

²⁸⁸ *Sūrah an-Nisā'* (4):92

But if he [i.e., the deceased] was from a people at war with you and he was a believer - then [only] the freeing of a believing slave' ²⁸⁹

Abū Ḥanīfah says, 'There is neither blood money, nor expiation as his firing (at the enemy) is permissible [...]. Therefore, there is nothing upon him just as there is nothing upon the one who fires at the one whose blood is permissible.'

However in our opinion, since the deceased is from those whose blood is protected by virtue of his *Īmān* (i.e. belief in Allāh), and the killer is from those who (according to the *Sharī'ah*) are responsible for their actions. Also, in light of the previously mentioned verse, it is as if he has killed one not being used as a human shield."

[End of ibn Qudāmah quote] ²⁹⁰

Imām al-Qurāfi رحمه الله said in *adh-Dhakhīrah* (3/408), "If they (the disbelievers) take their women and children as human shields, we leave them unless we fear for the Muslims (if the disbelievers are left). However, if they use Muslims as human shields, we leave them even if we fear for ourselves, as the blood of a Muslim is not permitted due to fear. Although, if (on the other hand) the human shields are dispersed within the enemy ranks, and if they are left the Muslims will be defeated, there is a threat to the foundations of Islām, the majority of the Muslim population, or the influential amongst them (i.e. leaders and experts), it becomes *Wājib* to repel the disbelievers. Thus, the sanctity of the human shield(s) is disregarded." ²⁹¹

²⁸⁹ *Sūrah an-Nisā'* (4):92

²⁹⁰ *Al-Mughnī* (7577), also refer to *Sharḥ al-Kabīr* (10/402)

²⁹¹ *Adh-Dhakhīrah* (3/408), *Qawānīn al-Fiqhiyyah* (p.97), and *Sharḥ Mukhtaṣar Khalīl* (3/114)

Chapter 15: Instances when it is Permissible to Kill Women, Children, the Elderly, Monks, and Others

In *Sharḥ al-Kabīr* (2/178), Ad-Dardīr رَحِمَهُ اللهُ says, “(and if they use their children as human shields) and women, (they should be left) as the property of the fighters,²⁹² (except if it is feared) for the Muslims...”

An-Nawawī رَحِمَهُ اللهُ says in *al-Minhāj (aṭ-Ṭālibīn)* (p.308), “If the battle is on-going, and they use their women and children as human shields, then it is permissible to fire at them [...] and if they use Muslims as human shields then unless it is a necessity, we leave them. (However, if it becomes a necessity) then according to the correct opinion, it is permissible to fire at them.”

In conclusion, it is indispensable that the commanders of the *Mujāhidīn* are knowledgeable in both, the Islamic rulings related to issues of *Jihād*, and military (and political) affairs, whilst fearing Allāh regarding His commands, prohibitions, and the *Jihād* of the *Ummah*. If they are negligent in any of these aspects, then rarely will the right courses be taken, in addition to leaving themselves (and their fighters) exposed to falling into one of two extremes: The complete disregard for sacred blood, and the extreme of abandoning *Jihādī* (military) operations altogether.

Hence, a balance must be struck in all of the believers affairs, as Allāh ﷻ has indicated in *Sūrah al-Baqarah* (2:143):

﴿وَكَذَلِكَ جَعَلْنَاكُمْ أُمَّةً وَسَطًا﴾

And thus We have made you a median [i.e., just] community

²⁹² i.e. they should be left, so that if Allāh grants victory to the believers, these same women and children will fall into the war booty, and subsequently be distributed as wealth amongst the *Mujāhidīn*

Likewise, the knowledge of the religion and specifically in rulings and matters related to *Jihād* must be present in both the leaders and followers. Consequently, every believer waging *Jihād* should be aware of its nature, aims, goals, and objectives, in addition to its limitations (i.e. prohibitions).

الذی جامع المشرکین ولسکن معہم THOSE WHO MINGLE WITH, AND RESIDE AMONG THE POLYTHEISTS

It is known to the majority of Muslims that it is, in general, impermissible for Muslims to reside amongst the disbelievers in their lands.

Allāh ﷻ says in *Sūrah al-Anfāl* (8:72):

﴿إِنَّ الَّذِينَ ءَامَنُوا وَهَاجَرُوا وَجَاهَدُوا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فِي
سَبِيلِ اللَّهِ وَالَّذِينَ ءَاوُوا وَنَصَرُوا أُولَٰئِكَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ وَالَّذِينَ
ءَامَنُوا وَلَمْ يُهَاجِرُوا مَا لَكُم مِّنْ وَلِيَّتِهِم مِّن شَيْءٍ حَتَّىٰ يُهَاجِرُوا﴾

Indeed, those who have believed and emigrated and fought with their wealth and lives in the cause of Allāh and those who gave shelter and aided - they are allies of one another. But those who believed and did not emigrate - for you there is no guardianship of them until they emigrate.

Additionally, the Prophet ﷺ said, in a narration collected by Abū Dāwūd and at-Tirmidhī رَحِمَهُمَا اللَّهُ:

أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَظْهَرِ الْمُشْرِكِينَ

“I am innocent of blame for every Muslim who resides amongst the polytheists.”²⁹³

Likewise, there are numerous verses in the noble Qur’ān severely censuring those Muslims who take the disbelievers as allies, such as in *Sūrah al-Mā'idah* (5:51) wherein Allāh says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا الْيَهُودَ وَالنَّصَارَىٰ أَوْلِيَاءَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ وَمَنْ يَتَوَلَّهُمْ فإِنَّهُ مِنْهُمْ﴾

O you who have believed, do not take the Jews and the Christians as allies. They are [in fact] allies of one another. And whoever is an ally to them among you - then indeed, he is [one] of them.

He ﷺ also says in *Sūrah at-Tawbah* (9:23):

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا آبَاءَكُمْ وَإِخْوَانَكُمْ أَوْلِيَاءَ إِنِ اسْتَحَبُّوا الْكُفْرَ عَلَى الْإِيمَانِ وَمَنْ يَتَوَلَّهُمْ فإِنَّهُ مِنْهُمْ﴾

O you who have believed, do not take your fathers or your brothers as allies if they have preferred disbelief over belief. And whoever does so among you - then it is those who are the wrongdoers.

Aside from the obvious harm upon the religion of the believer residing amongst the disbelievers, they also unwittingly

²⁹³ *Sunan Abī Dāwūd: The Book of Jihād* (2645) and *Jāmi' at-Tirmidhī: The Book on Military Expeditions* (1604)

volunteer themselves to be human shields, placing unnecessary obstacles between the *Mujāhidīn* and their foe. However, as has been covered, this will not stop the *Jihād*, nor the *Mujāhidīn* from attacking the disbelievers, neither will it prevent Allāh from inflicting the wrongdoers (and whoever else is amongst them) with His punishment. He ﷺ thus warns the believers in *Sūrah al-Anfāl* (8:25):

﴿وَاتَّقُوا فِتْنَةً لَا تُصِيبَنَّ الَّذِينَ ظَلَمُوا مِنْكُمْ خَاصَّةً
وَأَعْلَمُوا أَنَّ اللَّهَ شَدِيدُ الْعِقَابِ﴾

And fear a trial which will not strike those who have wronged among you exclusively, and know that Allāh is severe in penalty.

In addition, The Messenger of Allāh ﷺ explained in a narration recorded in *Ṣaḥīḥ al-Bukhārī: The Book of Tribulations* (7108):

إِذَا أَنْزَلَ اللَّهُ بِقَوْمٍ عَذَابًا، أَصَابَ الْعَذَابُ مَنْ كَانَ فِيهِمْ، ثُمَّ بُعِثُوا عَلَى
أَعْمَالِهِمْ

“If Allāh’s punishment descends upon a people, even the righteous amongst them will be encompassed by it, and then they will all be resurrected according to their deeds.”

As such, those Muslims refusing to extract themselves from between the ranks of the enemies of Allāh ﷻ fall under the above threat. They likewise place themselves in a situation similar to those Muslims that refused to migrate from Makkah in the time of the Prophet ﷺ.

Ibn Kathīr رَحِمَهُ اللَّهُ comments on the verse in *Sūrah an-Nisā’* (4:97) in his *Tafsīr* (2/559&560):

﴿إِنَّ الَّذِينَ تَوَفَّيْنَاهُمُ الظَّالِمِينَ أَنْفُسُهُمْ قَالُوا فِيمَ كُنْتُمْ قَالُوا كُنَّا مُسْتَضْعَفِينَ فِي الْأَرْضِ قَالُوا أَلَمْ تَكُنْ أَرْضُ اللَّهِ وَاسِعَةً فَتُهَاجِرُوا فِيهَا فَأُولَٰئِكَ مَأْوَاهُمْ جَهَنَّمُ وَسَاءَتْ مَصِيرًا﴾^{٢٩٤}

Indeed, those whom the angels take [in death] while wronging themselves - [the angels] will say, “In what [condition] were you?” They will say, “We were oppressed in the land.” They [the angels] will say, “Was not the earth of Allāh spacious [enough] for you to emigrate therein?” For those, their refuge is Hell - and evil it is as a destination.

Saying:

“Ibn ‘Abbās told me (Muḥammad bin ‘Abd ar-Raḥmān) that some Muslims used to go out with the idolaters increasing the size of their army against the Messenger of Allāh ﷺ. Then, an arrow would hit one of them and kill him, or he would be struck on his neck (with a sword) and killed, and Allāh sent down the verse, **Indeed, those whom the angels take [in death] while wronging themselves.**”²⁹⁴

Ad-Daḥḥāk stated that this verse was revealed about some hypocrites who did not join the Messenger of Allāh but remained in Makkah and went out with the idolaters for the battle of Badr. They were killed among those who were killed. Thus, this honourable verse was revealed about those who reside among the idolaters, while able to perform *Hijrah* and unable to practice the faith.

Such people will be committing injustice against themselves and falling into a prohibition according to the

²⁹⁴ Ṣaḥīḥ al-Bukhārī: The Book of the Prophetic Commentary of the Qur’ān (4596), and The Book of Afflictions (7085)

consensus and also according to this verse, ***Indeed, those whom the angels take [in death] while wronging themselves***, by refraining from *Hijrah*, ***[the angels] will say, "In what [condition] were you?"*** meaning, why did you remain here and not perform *Hijrah*, ***They will say, "We were oppressed in the land,"*** meaning, we are unable to leave the land or move about in the earth. ***They [the angels] will say, "Was not the earth of Allāh spacious [enough] for you to emigrate therein?"***

Abū Dāwūd recorded that Samurah bin Jundub رضي الله عنه said that the Messenger of Allāh ﷺ said:

مَنْ جَامَعَ الْمُشْرِكَ وَسَكَنَ مَعَهُ فَإِنَّهُ مِثْلُهُ

"Whoever mingles with the idolater and resides with him, he is just like him." ²⁹⁵

[End of ibn Kathīr quote]

There was also another incident during the caliphate of Abū Bakr *aṣ-Ṣiddīq* when Khālīd's رضي الله عنه army killed two Muslims who had previously written to the caliph declaring their conversion to Islām. Upon hearing the news, 'Umar رضي الله عنه was angered at Khalid's actions, however Abū Bakr responded saying, "That is what happens to those who live in the lands of the disbelievers." ²⁹⁶

In summary, despite this sub-chapter digressing somewhat from being a strictly *Fiqhī* discussion of the issue, it is intended more as a wake-up call and a warning to those Muslims remaining amongst the disbelievers despite having the ability to make *Hijrah*. Far from promoting the idea of any operations in which

²⁹⁵ *Sunan Abī Dāwūd: The Book of Jihād* (2787), and al-Albānī declared it authentic

²⁹⁶ Refer to *at-Tārīkh at-Ṭabarī* (2/327)

Chapter 15: Instances when it is Permissible to Kill Women, Children, the Elderly, Monks, and Others

Muslims are inadvertently harmed, the aim of these words is rather to highlight that if the eventuality does transpire - and we ask Allāh to safeguard all the Muslims - those Muslims should fear the question, especially if they are amongst a people whose war against Islām is hidden from none, ***“Was not the earth of Allāh spacious [enough] for you to emigrate therein?”***

We ask Allāh ﷻ to make a way out for all of the believers who find themselves weak and unable to extract themselves from amongst the enemies of Allāh.

﴿وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا ۖ﴾

And whoever fears Allāh - He will make for him a way out ²⁹⁷

²⁹⁷ Sūrah at-Ṭalāq (65):2

CHAPTER SUMMARY

It becomes permissible to kill those from amongst the disbelievers generally prohibited to kill intentionally in the following instances, today referred to as collateral damage,²⁹⁸ wherein it is not possible to differentiate between them and the fighters:

- During raids and night attacks
- If the disbelievers take human shields from their own women, children, elderly, and those who it is generally impermissible to kill intentionally, the scholars have two opinions:
 - 1) It is permissible to fire at them (the fighters) unrestrictedly
 - 2) It is permissible if there is a need

While, if the human shields are Muslims, it is impermissible to endanger their lives by continuing to fire at the disbelievers except in cases of dire necessity, or in the case of a greater evil transpiring in the case that they are left.

²⁹⁸ The US military describes collateral damage, in its *Department of Defense Dictionary of Military and Associated Terms* (p.76), as, "Unintentional or incidental injury or damage to persons or objects that would not be lawful military targets in the circumstances ruling at the time. Such damage is not unlawful so long as it is not excessive in light of the overall military advantage anticipated from the attack."

CHAPTER 16

جواز قتل النساء والصبيان والشيوخ والرهبان وغيرهم قصداً

INSTANCES WHEN IT IS PERMISSIBLE TO INTENTIONALLY TARGET THOSE USUALLY PROHIBITED FROM KILLING FROM AMONGST THE DISBELIEVERS

There are a number of exceptions to the general prohibition of intentionally killing women, children, the elderly, monks, and their likes from amongst the disbelievers. They are:

- 1) Those who fight with word or deed. These people fall under the implications of the verses in *Sūrah al-Baqarah* (2:190):

﴿وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ﴾

Fight in the way of Allāh those who fight you

And (2:191):

﴿فَإِنْ قَاتَلُوكُمْ فَاقْتُلُوهُمْ كَذَلِكَ جَزَاءُ الْكَافِرِينَ﴾

But if they fight you, then kill them. Such is the recompense of the disbelievers.

Ibn Al-Humām رَحِمَهُ اللَّهُ said, “And likewise anyone who fights from amongst them (i.e. those who are originally forbidden from being killed), should be killed to repel their harm, and because the act of *Qitāl* (fighting, killing) is permissible in *Haqīqah* (reality, i.e. the original ruling of *Qitāl*). (However,) the insane person should not be killed, unless he fights, in which case he too should be killed. Thus if the child and the insane person fight, they are killed.”²⁹⁹

- 2) Those who curse Allāh ﷻ, His Messenger ﷺ, Islām, or the believers, in accordance with the noble verse in *Sūrah at-Tawbah* (9:12) in which Allāh ﷻ says:

﴿وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَيْمَةَ الْكُفْرِ إِنَّهُمْ لَا أَيْمَنَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ﴾

And if they break their oaths after their treaty and defame your religion, then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease.

²⁹⁹ Sharḥ *Faṭḥ al-Qadīr* (5/203), in *The Clarification Regarding Intentionally Targeting Women and Children* (pgs.30&31)

Chapter 16: Instances when it is Permissible to Intentionally Target Those Usually Prohibited from Killing from Amongst the Disbelievers

Ibn Kathīr رَحِمَهُ اللهُ, while explaining the above verse said, “And from this verse, it is understood that whosoever insults the Prophet ﷺ, or curses the *Dīn* of *Islām*, then such a person is to be killed.”³⁰⁰

In *ash-Shifā* (2/549) al-Qāḍī ‘Iyyād رَحِمَهُ اللهُ says, “As we have recalled, the scholars have a consensus on the killing of whoever (curses or maligns the Prophet ﷺ).” Likewise, ibn Taymiyyah quotes *Imām Aḥmad* رَحِمَهُ اللهُ in *aṣ-Ṣārim al-Maslūl* (p.300) as saying, “Everyone, whether they be a Muslim or disbeliever, that blasphemes against the Prophet ﷺ or describes him with a deficiency, should be executed, and my opinion is that he should be killed without being called to repent.”

3) The leaders of the disbelievers. Allah ﷻ says:

﴿فَقَاتِلُوا أَمَّةَ الْكُفْرِ﴾

then fight the leaders of disbelief

Ibn ‘Ābidīn رَحِمَهُ اللهُ said, “And the female ruler should be killed even if she does not fight, and likewise the child king. This is because killing their ruler will deteriorate their valour (i.e. the morale of the disbelievers).”³⁰¹

4) Women who expose themselves in an attempt to distract, or insult the *Mujāhidīn*.

³⁰⁰ In the abridged English translation of *Tafsīr ibn Kathīr* (published by Darussalam), instead of saying, “then such a person is to be **killed**,” it says, “then such a person is to be **fought**.” However, in the text of the Arabic original, ibn Kathīr uses the word *Qatal* (قتل), which means to kill, (whereas the word for fighting is *Qitāl* [قتال]), therefore it would seem that this is a mistake in the English translation - and Allāh knows best

³⁰¹ *Ḥāshiyah Ibn ‘Ābidīn* (4/132), also in *The Clarification Regarding Intentionally Targeting Women and Children* (p.36)

Imām ibn Qudāmah رَحِمَهُ اللهُ said in *al-Mughnī* (9/288), “If a woman is present in the ranks of the disbelievers, or stands upon their fortifications and insults the Muslims, or exposes herself (in an attempt to distract them), then it becomes permissible to intentionally fire at her.” ³⁰²

5) Apostasy, as the Prophet ﷺ commanded the believers:

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

“Whoever changes his religion, then kill him.” ³⁰³

Al-Hāfidh ibn Hajar رَحِمَهُ اللهُ said, “And he (Ibn ‘Abbās رَضِيَ اللهُ عَنْهُ) narrated, ‘The female apostate is to be killed, and Abū Bakr رَضِيَ اللهُ عَنْهُ killed a woman who had apostatized during his *Khilāfah*, and all the Companions agreed, (with) not a single one of them objecting...’ Because the original female disbeliever can be enslaved and becomes property of the *Mujāhidīn*, but the female apostate cannot be enslaved, so she must be killed. In the *Ḥadīth* of Mu‘ādh رَضِيَ اللهُ عَنْهُ when the Prophet ﷺ sent him to Yemen, there are the words, “*Whichever man apostatizes from Islām, then call him back. So if he returns (then let him be), but if not, then strike his neck. And whichever woman apostatizes from Islām, then call her back. So if she returns (then let her be), but if not, then strike her neck.*” The chain of narration of this *Ḥadīth* is *Hasan*.” ³⁰⁴

Ibn Qudāmah al-Maqdisī رَحِمَهُ اللهُ said, “And he (Aḥmad ibn Ḥanbal) said, ‘Whosoever turns back from Islām, from amongst the men and women, and is mature and sane - they are given three days. If they return to Islām (then let them be), if not, they should be killed...’ There is no difference between men and

³⁰² *Al-Mughnī* (7578)

³⁰³ *Ṣaḥīḥ al-Bukhārī: The Book of Jihād* (3017)

³⁰⁴ *Fatḥ al-Bārī: Kitāb Istitābah al-Murtaddīn*, in *The Clarification Regarding Intentionally Targeting Women and Children*, p.32

Chapter 16: Instances when it is Permissible to Intentionally Target Those Usually Prohibited from Killing from Amongst the Disbelievers

women apostates in the obligation to kill them. This has been narrated from Abū Bakr and ‘Alī رضي الله عنهما, and is (also) the stance of al-Ḥasan al-Baṣrī, Az-Zuhrī, Ibrāhīm An-Nakh’ī, Makhūl, Ḥammād, Mālik, al-Layth, al-Awzā’ī, ash-Shāfi’ī, and Ishāq رحمهم الله.³⁰⁵

- 6) Those who are targeted in retaliation. This concept is established in a number of verses, such as in *Sūrah al-Baqarah* (2:178) wherein Allāh ﷻ says:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ﴾

O you who have believed, prescribed for you is legal retribution

And (2:194):

﴿وَالْحُرْمَتُ قِصَاصٌ فَمَنِ اعْتَدَىٰ عَلَيكُم فَاَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَىٰ عَلَيْكُمْ﴾

for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you.

While He ﷻ says in *Sūrah ash-Shūrā* (42:39-41):

﴿وَالَّذِينَ إِذَا أَصَابَهُمُ الْبَغْيُ هُمْ يَنْتَصِرُونَ ۚ وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِّثْلُهَا ۚ فَمَن عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ ۚ إِنَّهُ لَا يُحِبُّ الظَّالِمِينَ ۚ وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَٰئِكَ مَا عَلَيْهِم مِّن سَبِيلٍ ۚ﴾

³⁰⁵ Al-Mughnī: *Kitāb al-Murtad* (9/33), (7073&7074), in *The Clarification Regarding Intentionally Targeting Women and Children* (p.32)

And those who, when tyranny strikes them, they defend themselves. And the retribution for an evil act is an evil one like it, but whoever pardons and makes reconciliation - his reward is [due] from Allāh. Indeed, He does not like wrongdoers. And whoever avenges himself after having been wronged - those have nor upon them any cause [for blame].

And in *Sūrah an-Naḥl* (16:126):

﴿وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ ۖ وَلَئِنْ صَبَرْتُمْ
لَهُوَ خَيْرٌ لِّلصَّابِرِينَ﴾

And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed. But if you are patient - it is better for those who are patient.

In *Al-Ikhtiyārāt* (5/521) Shaykh ibn Taymiyyah رَحِمَهُ اللهُ says, “Verily, the retaliation in kind is a right for them. So it is permitted for them to perform it in order to restore their morale and to take revenge, yet they may decline it (i.e. this right) when patience is preferable. However, this is when the retaliation in kind would not result in any advance in the *Jihād* and when it would not increase their terror (so as to keep them away) from the likes of that. But if a widespread retaliation in kind would be an invitation for them towards *Īmān* or a preventative factor from their aggression, then in this case, it becomes included in a form of establishing the *Hudūd* (i.e. *Islāmic* legislated punishments) and a (proper) *Sharī’ah*-based *Jihād*.”³⁰⁶

³⁰⁶ Narrated by Ibn Mufliḥ in *Al-Furū’* (6/218), in *The Clarification Regarding Intentionally Targeting Women and Children* (p.52)

Chapter 16: Instances when it is Permissible to Intentionally Target Those Usually Prohibited from Killing from Amongst the Disbelievers

Shaykh ibn al-‘Uthaymīn رَحِمَهُ اللهُ said in a tape recording regarding this topic: “And the second (matter) is the forbiddance of killing women and children during times of war.

But if it is said: ‘If they (the *kuffār*) do this to us - meaning that they kill our children and women - Then do we then kill them?’

The apparent [*Thāhir*] is that it is (permissible) for us to kill their women and children - even if it means that we lose profit/benefit from it [since keeping them alive is a profit/benefit because they become the property of the Muslims]; (and killing them in this situation is permissible) due to it threatening the hearts of the enemies and a humiliation for them. And due to the generality of the Statement of Allāh [2:194]:

﴿الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَتُ قِصَاصٌ فَمَنْ أَعْتَدَى عَلَيْكُمْ
فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا أَعْتَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ
الْمُتَّقِينَ﴾

So whoever has assaulted you, then assault him in the same way that he has assaulted you.”³⁰⁷

- 7) As a means of putting pressure upon the disbelievers, weakening their resolve, and dividing their unity.

There are a number of narrations regarding an incident that occurred during the Prophet’s ﷺ journey to Hudaybiyyah, wherein the Companions apprehended a disbelieving spy, who proceeded to inform them that the Quraysh had gathered the tribes surrounding Makkah, making a pact that they would all

³⁰⁷ (Refer to side ‘B’ from the third cassette of *Kitāb al-Jihād* from *Sharḥ Bulūgh al-Marām*, starting at 29:09. Or, download it from the Shaykh’s website [here](#), in *The Clarification Regarding Intentionally Targeting Women and Children* (p.72)

fight the Muslims if they insisted on continuing their pilgrimage to Makkah.

Ibn Kathīr رَحِمَهُ اللهُ, in his *Tafsīr* (9/157-158) of *Sūrah al-Faṭḥ* says:

Al-Bukhārī رَحِمَهُ اللهُ recorded in his *Ṣaḥīḥ* in the *Book of Conditions* that al-Miswar bin Makhramah and Marwan bin al-Ḥakam both narrated attesting to the truthfulness of the other, “Allāh’s Messenger set out at the time of Al-Ḥudaybiyyah with several hundred of his Companions. When he reached Dhul-Ḥulayfah, he had the sacrificial animals garlanded and marked and resumed the state of *Iḥrām* for ‘*Umrah*. He then sent several men from the tribe of Khuzā’ah to gather news for him and then he proceeded. When he arrived at a village called al-Ashtat, his advance regiment came back and said, ‘The Quraysh have gathered their forces against you, including al-Aḥbash tribes. They are intent on fighting you, stopping you, and preventing you.’

The Messenger ﷺ said:

أَشِيرُوا أَيُّهَا النَّاسُ عَلَيَّ، أَتَرَوْنَ أَنْ أَمِيلَ إِلَى عِيَالِهِمْ وَذُرَارِيِّ هَؤُلَاءِ الَّذِينَ يُرِيدُونَ أَنْ يَصُدُّوْنَا عَنِ الْبَيْتِ، فَإِنْ يَأْتُونَا كَانَ اللَّهُ عَزَّ وَجَلَّ قَدْ قَطَعَ عَيْنًا مِنَ الْمُشْرِكِينَ، وَإِلَّا تَرَكْنَاهُمْ مَحْرُوبِينَ

‘O people! Give me your opinion. Do you recommend that I should destroy the families and offspring of those who want to stop us from the Ka’bah? If they should come to us (for peace) then Allāh will destroy a spy from the pagans, or otherwise we will leave them in a miserable state.’³⁰⁸

While in another narration, the Prophet ﷺ said:

³⁰⁸ *Ṣaḥīḥ al-Bukhārī: The Book of Military Expeditions* (4178&4179)

Chapter 16: Instances when it is Permissible to Intentionally Target Those Usually Prohibited from Killing from Amongst the Disbelievers

أَتَرُونَ أَنْ نَعْمِلَ إِلَىٰ ذَرَارِيٍّ هَٰؤُلَاءِ الَّذِينَ أَعَانُواهُمْ فَنُصِيبَهُمْ، فَإِنْ
فَعَدُوا فَعَدُوا مُؤْتَوِرِينَ مَحْرُوبِينَ، وَإِنْ يَجِئُوا تَكُنْ عُنُقًا قَطَعَهَا
اللَّهُ، أَمْ تَرُونَ أَنْ نَوْمَ الْبَيْتِ، فَمَنْ صَدَّنَا عَنْهُ فَاتَّلْنَاهُ؟

*“Advise me! Do you think we should target the children of those who helped them (the enemies), so we kill them; and if they remain sitting, then they will sit as those whose families have been killed, and property been seized and if they do not come then it will be a neck, which Allāh has cut? Or do you see that we should travel to the House [Ka’bah] and then whoever prevents us from it, we fight him?”*³⁰⁹

[End of ibn Kathīr quote]

In these narrations, the Prophet ﷺ mentioned two courses of action as he consulted his Companions, which would have resulted in one of three outcomes:

The **first** course of action he suggested was that the Muslims conduct, what in military terms is referred to as a *Turning Movement*.³¹⁰ Since the Quraysh were intent on barring him from reaching the *Ka’bah*, then he would head for their homes wherein their women, children, and property was situated

³⁰⁹ *Musnad Aḥmad* (18166), al-Bayhaqī (9/218), an-Nasā’ī in *al-Kubrā* (5/170), ‘Abd ar-Razzāq (5/330), at-Ṭabarānī in *al-Kabīr* (20/10), and similar is narrated by al-Bukhārī (4/1531), and Ibn Abī Shaybah (7/387). Also, refer to *Zād al-Ma’ād* (2/117&118). and Shaykh Abū Qatādah al-Filisīnī’s *Fatwā* in *The Clarification Regarding Intentionally Targeting Women and Children* (p.95)

³¹⁰ The US Military in their *Field Manual 3-90 (FM 3-90)* (p.92), defines a Turning Movement as, “... a form of manoeuvre in which the attacking force seeks to avoid the enemy’s principle defensive positions by seizing objectives to the enemy rear and causing the enemy to move out of his current positions or divert major forces to meet the threat (FM 3-0).”

unguarded, which would have put the disbelievers in a dilemma (likely to result in one of two outcomes):

Either (a) the disbelievers would remain in their original blocking positions, in which case they would lose their undefended families and wealth to the Muslims. Or, (b) they would be forced to leave their blocking positions to defend their exposed families and property, in which case the Muslims would have a clear and unimpeded route towards their objective in Makkah, and their original goal in performing the 'Umrah.

While the **second** course of action that would have resulted in the third outcome, was for the Muslims to maintain their original course, resulting in (c) a direct confrontation with the disbelievers' defending (blocking) forces.

However, ultimately the Muslims, guided by the Prophet ﷺ, were able to avoid bloodshed by out manoeuvring the polytheist's forces and slipping by them unmolested.³¹¹

³¹¹ Refer to the biographical accounts for more details on this incident.

CHAPTER SUMMARY

Those instances when the general ruling regarding the impermissibility of killing of the disbelievers' women, children, elderly, on so on, is lifted are:

- 1) If they fight
- 2) If they curse Allāh ﷻ, His Messenger ﷺ, or Islām
- 3) The leaders of disbelief
- 4) Women who expose themselves attempting to distract the *Mujāhidīn*
- 5) Apostates
- 6) Retaliation (in kind)
- 7) Weakening the disbelievers morale

CHAPTER 17

أحكام الأسرى

THE RULING REGARDING PRISONERS OF WAR

In situations in which the believers capture disbelievers during their wars, Allāh ﷻ has legislated four options the Muslims can utilise in dealing with their prisoners of war (POWs):

- 1) Execution
- 2) Enslavement
- 3) Freeing without ransom
- 4) Ransoming in exchange for whatever benefits the Muslims

The evidence for this is His ﷻ statement in *Sūrah Muḥammad* (47:4):

﴿فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَثْخَنْتُمُوهُمْ فَشُدُّوا أَوْثَاقَهُمْ فَمَا
مِّنْ بَعْدِ وِثَامٍ فَدَاءٍ حَتَّىٰ تَضَعَ الْحَرْبُ أَوْزَارَهَا﴾

*So when you meet those who disbelieve [in battle],
strike [their] necks until, when you have inflicted*

slaughter upon them, then secure their bonds, and either [confer] favour afterwards or ransom [them] until the war lays down its burdens.

قتل الأسير

EXECUTION

Imām Abū Bakr al-Jaṣṣāṣ رَحِمَهُ اللهُ states:

“The foremost jurists have all agreed upon the permissibility of executing the prisoner (of war), (and) we are not aware of any disagreement in this regard. The reports of the Prophet ﷺ killing prisoners are indisputable (*Mutawātir*), such as his killing of ‘Uqbah ibn Abī Mu’īt and an-Naḍr ibn Ḥārith after they were captured on the day of Badr. Likewise, on the day of Uḥud Abū ‘Uzzah the poet was executed after falling into (the Muslims) captivity. Additionally, he executed (all of the men from) Banī Quraydhah after they agreed to descend (from their fortress) and have Sa’d ibn Mu’ādh rule regarding their affair, who ruled that (their men) should be killed and their women and children enslaved [...]. In addition, part of Khaybar was conquered by force and part by agreement and upon the condition that ibn Abī’l-Ḥaḳīq would not attempt to conceal anything (from the Muslims), however when his deceit was uncovered he was executed. During the conquest of Makkah, he ﷺ ordered that Hilāl ibn Khaṭal, Muqīs ibn Ḥabbābah, ‘Abdullāh ibn Sa’d ibn Abī Sarḥ, and others be killed, saying:

أَقْتُلُوهُمْ، وَإِنْ وَجَدْتُمُوهُمْ مُتَعَلِّقِينَ بِأَسْتَارِ الْكَعْبَةِ

‘Kill them even if you encounter them clinging onto the covering of the Ka’bah.’³¹²

... then he freed the people of Makkah without taking any of their wealth as *Ghanīmah*.”³¹³

Imām Abū Dāwūd رَحِمَهُ اللهُ عَلَيْهِ entitiled a chapter in his *Sunan*:

باب قَتْلِ الْأَسِيرِ وَلَا يُعْرَضُ عَلَيْهِ الْإِسْلَامُ

*The Chapter of Killing the Prisoner without calling him to Islām.*³¹⁴

Wherein he narrated from Anas ibn Mālik رَحِمَهُ اللهُ عَلَيْهِ (2685):

أَنَّ رَسُولَ اللَّهِ ﷺ دَخَلَ مَكَّةَ عَامَ الْفَتْحِ وَعَلَى رَأْسِهِ الْمِغْفَرُ، فَلَمَّا نَزَعَهُ جَاءَهُ رَجُلٌ، فَقَالَ: ابْنُ خَطَلٍ مُتَعَلِّقٌ بِأَسْتَارِ الْكَعْبَةِ، فَقَالَ "اقتُلوه"

“Allāh’s Messenger ﷺ entered Makkah in the Year of the Conquest wearing a helmet. When he took it off a man came to him and said, ‘Ibn Khaṭal is clinging to the curtains of the Ka’bah.’ Thereupon he said, ‘Kill him.’”³¹⁵

Al-Ḥāfidh al-‘Irāqī رَحِمَهُ اللهُ عَلَيْهِ said that, “Al-Bukhārī and others used this (narration) as clear evidence regarding the permissibility of

³¹² *Sunan an-Nasā’ī: The Book of the Prohibition of Bloodshed* (4067), *ibn Abī Shaybah* (36913), *ad-Dāraqūṭnī* (3/59), *al-Mustadrak* (2329), and *al-Albānī* declared it authentic in *aṣ-Ṣaḥīḥah* (1723)

³¹³ *Aḥkām al-Qur’ān* (3/520)

³¹⁴ It is the 127th Sub-Chapter in *The Book of Jihād*

³¹⁵ *Sunan Abū Dāwūd: The Book of Jihād* (2685), also in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Exoditions* (3044), and *Ṣaḥīḥ Muslim: The Book of Ḥajj* (1357). Ibn Khaṭal became a Muslim but then reverted to disbelief and killed his Muslim attendant. After his apostasy, he used to curse the Prophet ﷺ, and he likewise had two slave girls that would sing satirizing the Prophet ﷺ and the Muslims

killing the restrained prisoner. Thus, when ibn Khaṭal was caught, he was rendered like a prisoner under the control of the *Imām*, who then has the option to choose between a number of courses, with execution being one of them. Abū Dāwūd indicated that ibn Khaṭal was not called to Islām during the incident, thus he used this incident as evidence the prisoner can be executed without calling him to Islām.”³¹⁶

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللهُ said in *aṣ-Ṣārim al-Maslūl* (p.243), “As for executing the prisoner or enslaving him, then I do not know of any difference of opinion (regarding this).”

كيفية قتل الأسير وحكم التمثيل به

HOW THE PRISONER IS TO BE EXECUTED, AND THE RULING REGARDING MUTILATION

Mutilation in this context is the deliberate damaging or disfigurement, especially by removing parts of the body of the prisoner, and is performed whether he is living or dead. An example of this occurred on the day of Uhūd, with al-Mubarakpūrī رَحِمَهُ اللهُ writing in his work, the *Sealed Nectar* (p.279):

“That was the last attack made by the idolaters against the Prophet ﷺ [that day]. Being almost certain of his death, the idolaters returned to their camp and started preparations to go back to Makkah. Some of them involved themselves in mutilating the killed Muslims, and so did their women. Woman and men cut off the ears, the noses, (and) the genitals of the martyrs. They even cut open their bellies. Hind bint ‘Utbah - for instance - ripped

³¹⁶ *Ṭarḥ at-Tathrīb* (5/87), also refer to *Faṭḥ al-Bārī* (1/276)

open the liver of Hamzah and chewed it; but finding it unpleasant, she spat it out. She even made the ears and noses of Muslims into anklets and necklaces.”³¹⁷

Al-Imām al-Kāsānī رَحِمَهُ اللهُ states in *ash-Sharḥ al-Kabīr* (2/179), “If the Muslims decide to kill (their) prisoners they should not punish them with thirst, hunger, or other than these from the various methods of torture; as these are (all forms of) torture lacking any benefit.”

Ibn Qudāmah رَحِمَهُ اللهُ says in *al-Kāfi* (4/128), “When execution is decided (by the *Imām*) the prisoner should be beheaded with the sword according to the saying of the Exalted:

﴿فَضْرَبَ الرِّقَابَ﴾

*strike [their] necks*³¹⁸

... and due to the Prophet ﷺ ordering the prisoners he had executed be beheaded. In addition, it is not permissible to mutilate the prisoner, corresponding with what was narrated by Buraydah رَضِيَ اللهُ عَنْهُ:

اغْزُوا بِاسْمِ اللَّهِ فِي سَبِيلِ اللَّهِ، قَاتِلُوا مَنْ كَفَرَ بِاللَّهِ، اغْزُوا وَلَا تَغْلُوا، وَلَا تَغْدِرُوا، وَلَا تَمَثِّلُوا

*‘Fight in the name of Allāh, for the sake of Allāh. Do not embezzle the spoils; do not break your pledge; do not mutilate...’*³¹⁹

³¹⁷ Also refer to ibn Hishām (p.150)

³¹⁸ *Sūrah Muḥammad* (47):4

³¹⁹ *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1731) and *Sunan ibn Mājah: The Book of the Rights of Ḥajj* (2967)

Az-Zamakhsharī رَحْمَةُ اللَّهِ says in *al-Kashshāf* (2/645), “There is no disagreement in the prohibition of mutilation.”

As for what has been narrated concerning the Prophet’s ﷺ treatment of those who killed the camel herder and drove away (i.e. stole) the camels, then this was an act of *Qīṣāṣ* (legal retribution) due to their killing of the camel herder in the same fashion.³²⁰

Moreover, the above statements are all referring to the treatment of the disbelievers after their capture; however, as far as what happens before that, and during combat, then there is no problem in disfiguring or mutilating them.

As such, Allāh ﷻ commands the angels in *Sūrah al-Anfāl* (8:12):

﴿فَأَضْرِبُوا فَوْقَ الْأَعْنَاقِ وَأَضْرِبُوا مِنْهُمْ كُلَّ بَنَانٍ﴾

strike [them] upon the necks and strike from them every fingertip.

Al-Qurṭubī رَحْمَةُ اللَّهِ says in his *Tafsīr* (4/325) of the verse, “Muḥammad ibn Yazīd said, ‘[...] The meaning is that they were permitted to strike their faces...’” He also mentions a number of opinions as to the meaning of (بَنَانٍ), and from them being the fingers, the tips of the fingers and toes, and according to Mujāhid it means the joints.

According to ibn Qudāmah رَحْمَةُ اللَّهِ, “It (i.e. mutilation) is permissible if it is done to achieve a benefit, due to what has been related to us about when ‘Amr ibn al-’Āṣ رَضِيَ اللَّهُ عَنْهُ was besieging Alexandria: When the disbelievers beheaded a Muslim and took his head. The companions of the man came to ‘Amr

³²⁰ Referring to the narration in *Ṣaḥīḥ al-Bukhārī : The Book of Jihād* (3018), recorded on p.266

angered (by what had happened), so he told them that they should take a man from the disbelievers, behead him and, using the catapult, launch his head (over the city walls) to the disbelievers. After they did that, the people of Alexandria threw the head of the Muslim back to his people.³²¹

جواز المثلة قصاصاً

THE PERMISSIBILITY OF MUTILATION AS AN ACT OF QIṢĀṢ

As has already been mentioned, there are a number of actions, ordinarily prohibited in Islām that become permissible in the case of *Qiṣāṣ* (retaliation). Mutilation is one such act. Allāh ﷻ mentions in *Sūrah al-Baqarah* (2:194):

﴿الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ﴾

[Fighting in] the sacred month is for [aggression committed in] the sacred month, and for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you. And fear Allāh and know that Allāh is with those who fear Him.

Ad-Dardīr رحمه الله says in *ash-Sharḥ al-Kabīr* (2/179), “If they (i.e. the disbelievers) have not mutilated a Muslim [...] it is *Harām* to

³²¹ *Al-Mughnī* (9/327), (7638)

do after gaining authority over them (i.e. capturing them) [...] (however if they have) then it becomes permissible.”

Ad-Dasūqī رحمه الله says in his explanation of the above statement, “‘It is *Ḥarām* to do after gaining authority over them,’ means that before gaining authority over them it is permissible for us to kill them (during combat) in any way possible, even if it involves mutilation.³²² ‘(However if they have) then it becomes permissible,’ means that (if they have done so) it is permissible to mutilate them after gaining authority over them.”³²³

He also says in *Minaḥ al-Jalīl* (3/154), “... It is permissible during combat before gaining authority over them, or after they have mutilated a Muslim.”

Shaykh al-Islām ibn Taymiyyah رحمه الله says in *al-Fatāwā al-Kubrā* (5/54), “Verily, the retaliation in kind is a right for them. So it is permitted for them to perform it in order to restore their morale and to take revenge, yet they may decline it (i.e. this right) when patience is preferable. However, this is when the retaliation in kind would not result in any advance in the *Jihād* and when it would not increase their terror (so as to keep them away) from the likes of that. But if a widespread retaliation in kind would be an invitation for them towards *Īmān* or a preventative factor from their aggression, then in this case, it becomes included in a form of establishing the *Hudūd* (i.e. *Islāmic* legislated punishments) and a (proper) *Sharī’ah*-based *Jihād*.”³²⁴

³²² Those who have experienced combat will know the reality of this; much of the time during combat, even without intending, many injuries sustained are somewhat gruesome, and are as if the recipient had been severely mutilated. However, this is an inescapable reality of warfare as both believers and disbelievers can attest to.

³²³ *Hāshiyah ad-Dasūqī* (2/179)

³²⁴ Also narrated by Ibn Mufliḥ رحمه الله in *Al-Furū’* (6/218), in *The Clarification Regarding Intentionally Targeting Women and Children*, p.52

He also says in *Majmū' al-Fatāwā* (28/314), “And to leave it (i.e. not to mutilate them) is better, like Allāh has said:

﴿وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ وَلَئِنْ صَبَرْتُمْ لَهُوَ خَيْرٌ لِلصَّابِرِينَ ۝ وَاصْبِرْ وَمَا صَبْرُكَ إِلَّا بِاللَّهِ ۝﴾

And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed. But if you are patient - it is better for those who are patient. And be patient, and your patience is not but through Allāh.”³²⁵

Thus, from the evidence used to establish the permissibility of mutilation as an act of *Qiyās*, is what has been narrated by al-Bukhārī رَحِمَهُ اللَّهُ in his *Ṣaḥīḥ* (3018): *The Book of Jihād* under the chapter; ‘If a polytheist burns a Muslims, should he be burnt (in retaliation)?’ Anas رَحِمَهُ اللَّهُ then narrates:

أَنَّ رَهْطًا مِنْ عُكْلٍ، ثَمَانِيَّةً، قَدِمُوا عَلَى النَّبِيِّ ﷺ، فَاجْتَوَوْا الْمَدِينَةَ، فَقَالُوا: يَا رَسُولَ اللَّهِ ابْعَثْ رِسَالًا، قَالَ: «مَا أَجِدُ لَكُمْ إِلَّا أَنْ تَلْحَقُوا بِالدَّوْدِ»، فَانْطَلَقُوا، فَشَرِبُوا مِنْ أَبْوَالِهَا وَالْبَانِهَا، حَتَّى صَحُّوا وَسَمِنُوا، وَقَتَلُوا الرَّاغِيَّ وَاسْتَأْفَقُوا الدَّوْدَ، وَكَفَرُوا بَعْدَ إِسْلَامِهِمْ، فَاتَى الصَّرِيخُ النَّبِيَّ ﷺ، فَبَعَثَ الطَّلَبَ، فَمَا تَرَجَّلَ النَّهَارُ حَتَّى أُتِيَ بِهِمْ، فَقَطَّعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ، ثُمَّ أَمَرَ بِمَسَامِيرَ فَأُخِمِيَتْ فَكَحَلَهُمْ بِهَا، وَطَرَحَهُمْ بِالْحَرَّةِ، يَسْتَسْقُونَ فَمَا يُسْقَوْنَ، حَتَّى مَاتُوا، قَالَ أَبُو قِلَابَةَ: قَتَلُوا وَسَرَقُوا وَحَارَبُوا اللَّهَ وَرَسُولَهُ ﷺ، وَسَعَوْا فِي الْأَرْضِ فَسَادًا

“A group of eight men from the tribe of ‘Ukl came to the Prophet ﷺ and then they found the climate of Madīnah unsuitable for them. Therefore, they said, ‘O Messenger of Allāh! Provide us

³²⁵ *Sūrah an-Naḥl* (16:126&127)

with some milk.’ Allāh’s Messenger said, ‘*I recommend that you should join the herd of camels.*’ So they did so and drank from their urine and milk (as a cure) until they became healthy and gained weight. They then killed the shepherd and drove away the camels, and became disbelievers after having become Muslims. When the Prophet was informed by a caller, he sent some men in pursuit. Before the sun rose high, they were brought (back), then he had their hands and feet cut off, and ordered their eyes be branded with (red) hot nails, then they were left in the *Ḥarrah* (i.e. the rocky land surrounding Madīnah). They asked for water, but none provided them water until they died.” Abū Qilābah (a sub-narrator) said, “They committed murder and theft, spread evil in the land, and fought against Allāh and His Messenger ﷺ.” 326

In *Ṣaḥīḥ Muslim: The Book of Oaths, Muḥāribīn, Qiṣās, and Diyāt* (1671) Anas رَضِيَ اللَّهُ عَنْهُ relates, explaining the rationale behind the severe punishment meted out to the bandits in the previous narration:

إِنَّمَا سَمَلَ النَّبِيُّ ﷺ أَعْيُنَ أُولَئِكَ، لِأَنَّهُمْ سَمَلُوا أَعْيُنَ الرَّعَاءِ

“The Prophet’s ﷺ branding of their eyes was done as a recompense for their branding the eyes of the shepherd.”

In *Sharḥ Faṭḥ al-Qadīr* (5/401) al-Kamāl ibn al-Humām رَحِمَهُ اللَّهُ says regarding the above narration, “This was not mutilation. (Rather) mutilation is what is done at first without being an act of recompense (*Qiṣās*).”

³²⁶ Also in *The Book of the Limits and Punishments set by Allāh* (6805). Similar narrations are also found in *Ṣaḥīḥ Muslim: The Book of Oaths, Muḥaribin, Qisas, and Diyat* (1671), *Jāmi’ at-Tirmidhī* (72), *Sunan Abī Dāwūd: The Book of the Prescribed Punishments* (4364), *Sunan ibn Mājah* (2578), and *Sunan an-Nasā’ī: The Book of Fighting [The Prohibition of Bloodshed]* (4024)

Al-Ḥāfidh ibn Ḥajar رَحِمَهُ اللهُ says in *Fath al-Bārī* (1/241), “Mutilation (done) as an act of *Qisās* is not the type of mutilation that is prohibited.”

Ibn Qayyim رَحِمَهُ اللهُ, expounding on the legal rulings extracted from the (above) *Ḥadīth* of the bandits says, “And in it are the rulings of the permissibility of drinking camel’s urine, and the purity of the urine of those animals whose flesh is permissible to eat. The combining on the punishments of amputating the hands and feet, and execution of the bandits if they commit robbery and murder, and that the criminal should be dealt with as he dealt with (others): For their eyes were only branded due to their branding of the shepherd’s. Also, it is apparent that the rulings concerning this incident remain (applicable) and are not abrogated, and even if the incident happened prior to the revelation of the (relevant) laws, then the laws of the *Sharī’ah* (*al-Ḥudūd*) descended affirming, and not abolishing (the actions of the Prophet ﷺ with the men from ‘Ukl) - and Allāh knows best.”

حكم ضرب الأسير إن كان ضربه منفعة

THE RULING REGARDING BEATING THE PRISONER IF THERE IS BENEFIT IN IT

Scholars have ruled, according to the narration in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1779) and *Sunan Abī Dāwūd: The Book of Jihād* (2681), that it is permissible to beat the prisoner or person possessing critical information concerning the enemy.³²⁷ In it, Anas رَضِيَ اللهُ عَنْهُ narrates:

³²⁷ In contemporary terms this would be referred to as (Military) *Intelligence*, which according to the *US Department of Defense Dictionary of Military and Associated Terms* (2001, p.216) is, “The product resulting from the collection, processing, integration, analysis, evaluation, and interpretation of available information concerning foreign countries or areas. 2. Information and

أَنَّ رَسُولَ اللَّهِ ﷺ نَدَبَ أَصْحَابَهُ، فَأَنْطَلَقُوا إِلَى بَدْرٍ، فَإِذَا هُمْ بِرَوَايَا قُرَيْشٍ فِيهَا عَبْدٌ أَسْوَدٌ لِبْنِي الْحَجَّاجِ، فَأَخَذَهُ أَصْحَابُ رَسُولِ اللَّهِ ﷺ، فَجَعَلُوا يَسْأَلُونَهُ: أَيْنَ أَبُو سُفْيَانَ؟ فَيَقُولُ: وَاللَّهِ مَالِي بِشَيْءٍ مِنْ أَمْرِهِ عِلْمٌ وَلَكِنْ هَذِهِ قُرَيْشٌ قَدْ جَاءَتْ فِيهِمْ أَبُو جَهْلٌ وَعُتْبَةُ وَشَيْبَةُ ابْنَا رَيْعَةَ، وَأُمَيَّةُ بْنُ خَلَفٍ، فَإِذَا قَالَ لَهُمْ ذَلِكَ ضَرْبُوهُ، فَيَقُولُ: دَعُونِي دَعُونِي أَخْبِرْكُمْ، فَإِذَا تَرَكَوهُ، قَالَ: وَاللَّهِ مَالِي بِأَيِّ سُفْيَانَ عِلْمٌ، وَلَكِنْ هَذِهِ قُرَيْشٌ قَدْ أَقْبَلَتْ فِيهِمْ أَبُو جَهْلٌ وَعُتْبَةُ وَشَيْبَةُ ابْنَا رَيْعَةَ، وَأُمَيَّةُ بْنُ خَلَفٍ قَدْ أَقْبَلُوا، وَالنَّبِيُّ ﷺ، وَهُوَ يَسْمَعُ ذَلِكَ، فَلَمَّا انْصَرَفَ، قَالَ: "وَالَّذِي نَفْسِي بِيَدِهِ، إِنَّكُمْ لَتَضْرِبُونَهُ إِذَا صَدَقَكُمْ، وَتَدْعُونَهُ إِذَا كَذَبَكُمْ، هَذِهِ قُرَيْشٌ قَدْ أَقْبَلَتْ لَتَمْنَعَ أَبَا سُفْيَانَ".

“The Messenger of Allāh ﷺ called on his Companions and they proceeded towards Badr. Suddenly they found watering the camels of Quraysh, a black slave of Banū Hājāj. The Companions of the Messenger of Allāh seized him and began to ask, ‘Where is Abū Sufyān?’ He said, ‘I swear by Allāh, I do not know anything about him, but this is the Quraysh, and among them are Abū Jahl, ‘Utbah and Shaybah, the two sons of Rabī’ah, and Umayyah ibn Khalaf who have come here.’ When he said this, they began to beat him and he would exclaim, ‘Leave me, leave me! I will tell you. When they left him he said, ‘I know nothing about Abū Sufyān, but this is the Quraysh who have come here, and among them are Abū Jahl, ‘Utbah and Shaybah, the two sons of Rabī’ah, and Umayyah ibn Khalaf who have come here.’ The Prophet ﷺ was praying and hearing (all that was said whilst he was praying). When he finished, he said, ‘By the One in Whose Hand my soul is, you beat him when he tells

knowledge about an adversary obtained through observation, investigation, analysis, or understanding.”

*the truth and you leave him when he tells a lie. This is the Quraysh who have come here to defend Abū Sufyān.”*³²⁸

Abū Dāwūd رحمته الله entitled the chapter in which he recorded this *Ḥadīth*, ‘What can be obtained from the prisoner by forcing his confession through beating,’ thus indicating his view on its permissibility.

In ‘*Awn al-Ma’būd* (7/246) al-Khaṭṭābī رحمته الله states that, “In it - meaning the *Ḥadīth* - is evidence indicating the permissibility of beating the disbelieving prisoner if there is benefit to be obtained by doing so.”

Similarly, an-Nawawī رحمته الله in his commentary (4/1874) says, “Contained within (the narration) is the permission to beat the disbeliever who does not possess a covenant, even if he is a prisoner.”³²⁹

Al-Qurṭubī رحمته الله states that, “In the Companions beating of the boy, and the acknowledgement of their action by the Prophet ﷺ, is evidence indicating the permissibility of beating the prisoner and torturing the accused, **if** it is warranted.”³³⁰

Nevertheless, in the words of ‘Abd al-Muḥsin al-‘Ibād رحمته الله in *Sharḥ Sunan Abī Dāwūd* (14/244&245), “There is no problem in it due to a necessity,” an important point needs to be highlighted: That this should only be resorted to as a necessity, and never as a customary or routine practice. Therefore, those in authority ought to consider a number of factors before ordering such actions:

- What type of information does this prisoner or suspect likely possess?
- How important is the information?

³²⁸ The wording of the *Ḥadīth* is as is found in Abū Dāwūd’s narration

³²⁹ *Al-Minhāj Sharḥ al-Jāmi’ aṣ-Ṣaḥīḥ*

³³⁰ *Al-Mafḥam* (3/626)

- Are there reasonable alternative means of retrieving the required information?
- Who is the carrier of the information (i.e. is he/she one known for the animosity to Islām, or one that has a reasonable opinion, or may even incline towards Islām)?

The reason for the suggestion such steps, or control measures, be emplaced is primarily to stay within the boundaries of the permissible and not stray into that which Allāh has prohibited, which may lead one to become one of the oppressors the Muslims have sacrificed rivers of blood to remove from their lands - and with Allāh do we seek refuge.

The Messenger ﷺ said, in a *Ḥadīth* reported by *Imām Aḥmad* رحمه الله in his *Musnad* (12549):

اتَّقُوا دَعْوَةَ الْمَظْلُومِ وَإِنْ كَانَ كَافِرًا فَإِنَّهُ لَيْسَ دُونَهَا حِجَابٌ

“Beware of the supplication of the oppressed, even if he is a disbeliever, for there is no barrier between it (and Allāh).”

In addition, as indicated by his ﷺ words in the preceding narration: *“By the One in Whose Hand my soul is, you beat him when he tells the truth and you leave him when he tells a lie!”* The noble Prophet ﷺ understood that torture does not always yield the desired results, and may even be counter-productive, as the US and her allies in their ‘*War on Terror*’ can readily attest to.

In their analysis on (their) torture of Muslim detainees during their latest crusade, they found in most instances, torture only serves to galvanise an already antagonistic enemy. In addition, it serves to ‘radicalise’ otherwise ‘moderate’ Muslims who have either been at the receiving end of unjustified detention and torture, or have witnessed the same happening to their brothers and sisters in Islām. In most cases, they have found their best

results have been obtained through the otherwise 'humane' and kind treatment of detainees.³³¹

Accordingly, this needs to be borne in mind by the believers before undertaking torture as a method of extracting *actionable intelligence*³³² from their enemies.

May Allāh free the Muslim POWs, and punish their captors at the hands of the believers.

³³¹ The believing POW therefore should be aware of such disingenuous tactics on the part of the enemies of Allāh ﷻ, and rather remember Allāh's words (3:118):

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَتَّخِذُوا بِطَانَةَ مِّن دُونِكُمْ لَا يَأْلُونَكُمْ خَبَالًا وَدُوا مَا عٰنتُكُمْ قَدْ بَدَتِ الْبَغْضَاءُ مِنْ أَفْوَاهِهِمْ وَمَا تُخْفِي صُدُورُهُمْ أَكْبَرُ قَدْ بَيَّنَّا لَكُمُ الْآيَاتِ إِن كُنتُمْ تَعْقِلُونَ ﴿١١٨﴾﴾

O you who have believed, do not take as intimates those other than yourselves, [i.e., believers], for they will not spare you [any] ruin. They wish you would have hardship. Hatred has already appeared from their mouths, and what their breasts conceal is greater. We have certainly made clear to you the signs, if you will use reason.

And (2:217):

﴿وَلَا يَزَالُونَ يَقْتُلُونَكُم حَتَّىٰ يَرُدُّوكُم عَن دِينِكُمْ إِنِ اسْتَطَعُوا﴾

And they will continue to fight you until they turn you back from your religion if they are able.

³³² i.e. information that can be immediately acted upon without the need for further analysis or corroboration

الْمَنِّ وَالْفِدَاءِ

FREEING AND RANSOMING THE PRISONERS

As has preceded, scholars agree on the permissibility of executing or enslaving disbelieving POWs. They however differ as to the permissibility of freeing them without ransom (المنّ) or ransoming them (الفداء). The majority of scholars from the *Mālikī*, *Shāfiʿī*, and *Ḥanbalī* schools hold that the *Imām* has the choice whether to enslave, execute, free without ransom, or ransom the enemy POWs according to what he deems as being the most beneficial course of action for the Muslims. They cite as evidence for this claim the noble verse in *Sūrah Muḥammad* (47:4):

﴿فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَثْخَنْتُمُوهُمْ فَشُدُّوا الْوُثَاقَ فِيمَا مَنَّا
بَعْدَ وَمَا فِدَاءٌ حَتَّىٰ تَضَعَ الْحَرْبُ أَوْزَارَهَا ذَٰلِكَ وَلَوْ يَشَاءُ اللَّهُ لَآتَتْصَرِمُهُمْ وَلَٰكِن
لِّيَبْلُوَ بَعْضُكُمْ بِبَعْضٍ وَالَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ فَلَن يُضِلَّ أَعْمَالَهُمْ﴾

So when you meet those who disbelieve [in battle], strike [their] necks until, when you have inflicted slaughter upon them, then secure their bonds, and either [confer] favor afterwards or ransom [them] until the war lays down its burdens. That [is the command]. And if Allāh had willed, He could have taken vengeance upon them [Himself], but [He ordered armed struggle] to test some of you by means of others. And those who are killed in the cause of Allāh - never will He waste their deeds.

In addition, the Prophet ﷺ freed without ransom Thumāmah ibn Uthāl, Abu'l-‘Uzzah the Poet, and Abu'l-‘Āṣ ibn ar-Rabīʿ, and said about the prisoners of Badr:

لَوْ كَانَ الْمُطْعَمُ بْنُ عَدِيٍّ حَيًّا، ثُمَّ كَلَّمَنِي فِي هَؤُلَاءِ النَّتَنِ لَتَرَكْتُهُمْ لَهُ

“Had Muṭ’im ibn ‘Adī been alive, and he had spoken to me on behalf of these foul (creatures), I would have freed them for him.”³³³

With respect to ransoming the disbelieving POWs, the Prophet ﷺ did so with the prisoners of Badr who were approximately seventy in number. Most were ransomed in exchange for money, although there were, as detailed by the scholars of *Sīrah*, a number that were freed in exchange for teaching groups of the Muslim children how to read and write..

Therefore, the *Imām* should choose the most beneficial option in dealing with the POWs. For example, it may be better to execute those amongst them who were particularly harmful to the Muslims (in war) and whose loss would greatly affect the disbelievers strength and morale. Others less harmful, but nevertheless holding positions such that the disbelievers would be willing to pay hefty ransoms, or free many Muslims POWs to secure their release should accordingly be ransomed. Others may incline towards Islām, and as such releasing them without ransom may result in their Islām, and the Islām of their people. While others may be more beneficial to retain as captives, such as those whose service would likely be of benefit to the Muslims, and whose harm could be lessened by keeping them captive, such as the disbelievers’ women and children.^{334, 335}

³³³ Ṣaḥīḥ al-Bukhārī: Kitāb Farḍ al-Khums (3139), and Sunan Abū Dāwūd: The Book of Jihād (2689), and Musnad Aḥmad: Musnad al-Madaniyyīn (16733)

³³⁴ The Mamluks were a historic example of this category: They were young boys, originally bought as slaves, who were raised in the Islāmic Army’s military barracks and educated in a variety of Islāmic and military sciences. many of them would later become some of their era’s leading generals, and even heads of state. In more recent times, upon the defeat of Nazi Germany, the US, as part of *Operation Paperclip*, captured many of the Nazi’s top

The Ḥanafī's reasoned, and in particular Abū Yūsuf and Muḥammad ash-Shaybānī رَحِمَهُمَا اللَّهُ, "It is permissible to ransom the prisoners in return for Muslim prisoners; as the return of the Muslims is of benefit to us, and (as such) takes precedence over killing the disbeliever. Indeed, Allāh ﷻ has said:

﴿فَأَمَّا مَنَّا بَعْدُ وَإِنَّمَا فَدَاءُ﴾

and either [confer] favor afterwards or ransom [them]"

While with regards to freeing without ransom they said, "It is not permissible to free them without anything in return, even if they embrace Islām, as they are tied to the rights of the fighters (i.e. their price is the right of those eligible for a share in the *Ghanīmah*)."

Nevertheless, Abū Ḥanīfah رَحِمَهُ اللَّهُ himself differed, arguing, "Neither freeing them with, or without ransom is permissible. (Rather) according to the words of the Exalted (9:5):

﴿فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ﴾

kill the polytheists wherever you find them

... (only) killing or enslavement have been mentioned. Accordingly, the generality of the verse implies that every polytheist should be killed; before or after his capture, unless there exists evidence of an exemption to this rule.³³⁶

minds and scientists, compelling them to work for the US military and the CIA in the US

³³⁵ Refer to *al-Mughnī* (9/221), (7451)

³³⁶ Such as the Prophet's ﷺ well known prohibition of killing women and children

Sūrah al-Barā'ah is from the last commandments Allāh revealed, with its verse taking precedence over the Exalted's words (47:4):

﴿فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَثْبَتْتُمُوهُمْ فَشُدُّوا الْوُثَاقَ فَلَمَّا مَتَّاعُوا وَإِمَّا فِدَاءً﴾

So when you meet those who disbelieve [in battle], strike [their] necks until, when you have inflicted slaughter upon them, then secure their bonds, and either [confer] favor afterwards or ransom [them]

... and over the actions of Allāh's Messenger when he ransomed the prisoners of Badr. Likewise, the Exalted's words (2:193):

﴿وَقَاتِلُوهُمْ حَتَّىٰ لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ لِلَّهِ﴾

Fight them until there is no [more] fitnah and [until] religion [i.e., worship] is for Allāh,

make it an obligation to kill them. As such, killing them after their suppression is a clear injunction (فرض محكم), and thus to ransom them would be abandoning this obligation. Also, to repel the evil of them waging war against us is better than freeing the Muslims that are with them (as POWs)..."

Imām Abū Ḥanīfah رَحِمَهُ اللَّهُ, as is evident from his words, considered that the verse (9:5) abrogated the earlier verse in *Sūrah Muḥammad* (47:4) and the actions of the Prophet ﷺ during the earlier battles of Badr and Uḥud.

Needless to say, it appears - and Allāh knows best - that the correct opinion is that of the majority; which holds that the *Imām* can choose between execution, enslavement, ransoming, and freeing without ransom, according to where the greatest benefit lies, as indicated by the verse in *Sūrah Muḥammad* (47:4):

﴿فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَثْخَسْتُمُوهُمْ فَشُدُّوا أَلْوَتَاقَ فَإِمَّا مَنَافِعُ وَمِمَّا فِدَاءٌ حَتَّىٰ تَضَعَ الْحَرْبُ أَوْزَارَهَا﴾

So when you meet those who disbelieve [in battle], strike [their] necks until, when you have inflicted slaughter upon them, then secure their bonds, and either [confer] favor afterwards or ransom [them] until the war lays down its burdens.

With Mujāhid رَحِمَهُ اللَّهُ saying regarding it, “Until there no longer remains on the earth a religion other than Islām. Therefore, freeing and ransoming are explicit (options) in this verse, and are not abrogated, as Abū Ḥanīfah holds, by the verse:

﴿فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ﴾

kill the polytheists wherever you find them

... Due to two reasons:

Firstly, if it is possible to act upon two verses (simultaneously) then it is not permissible to abrogate one with the other, and (in this case) acting according to both is possible if all (options) are permitted, according to the view of the *Imām*...^{337, 338}

³³⁷ *Al-Injād fī Abwāb al-Jihād*, (p.244)

³³⁸ In *An Introduction to the Sciences of the Qur’aan* (pgs.236&237), its author says, “There are a number of conditions that the scholars of *Uṣūl al-Fiqh* and ‘*Ulūm al-Qur’ān* have laid down in order to substantiate any claim of *Naskh* [abrogation]. One of the reasons for this is that *naskh* is called only as the last-resort, since the very concept of *naskh* implies discarding a ruling for another one. As long as both rulings can be applied, *Naskh* is not resorted to. The more important conditions are as follows:

- 1) The most important condition for *Naskh* to have occurred is that the two rulings in question must directly contradict each other, such that both rulings cannot be applied at the same time, and there exists no way to reconcile them. This is because, as just mentioned, *Naskh* is only called as

In addition, ibn Qayyim رَحِمَهُ اللهُ says in *Zād al-Ma'ād* (2/5), “He رَحِمَهُ اللهُ would pardon some, kill some, ransom some for money and some for the release of Muslims prisoners. He did all of these things in accordance with that which was beneficial (to the Muslims).

On one occasion,³³⁹ the *Anṣār* sought permission from him not to take the ransom of his uncle al-‘Abbās, however he رَحِمَهُ اللهُ said:

لَا تَدْعُوا مِنْهُ دِرْهَمًا

‘You will not leave a single dirham of it!’³⁴⁰

He also رَحِمَهُ اللهُ returned the captives from Ḥawāzin to them after the distribution of the *Ghanīmah* and the hearts of who had gained spoils were positively affected by this (and they gave up their captives), and he رَحِمَهُ اللهُ compensated those who did not forsake their captives with six shares in return for each captive.”³⁴¹

Ibn Qudāmah رَحِمَهُ اللهُ stated in *al-Mughnī* (9/222), raising a valuable point, “Indeed this choice is according to benefit and reason, and not according to desires. Therefore, whenever he (i.e. the *Imām*) has perceived the (greatest) benefit laying in a particular course from amongst the (four) options, it then becomes *Wājib* upon him (to select the most beneficial), and it is not permissible to disregard it. However, whenever there exists indecision (as to the best choice), then execution is better.”³⁴²

a last resort, when there exists no other way to explain the two rulings. Therefore, if one of the rulings can apply to a specific case, and the other ruling to a different case, this cannot be considered an example of *Naskh*...”

³³⁹ This happened when he was captured amongst the polytheists during the battle of Badr

³⁴⁰ *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (3048)

³⁴¹ Also in *Provisions for the Hereafter* (pgs.319&320)

³⁴² *Al-Mughnī* (7451)

Accordingly, the *Imām* or *Amīr* is required to consider when presiding over such matters, the *Ummah* as a whole in his decision-making process, in line with the principle of the general (or greater) benefit outweighing the specific (or restricted) benefit. In practice, this places the group's benefit over the individual, the communal benefit over the group's, the regional benefit over the communal, and the *Ummah's* benefit above all else. Thus, the local or regional leader must put his group or region's interests to the side if they conflict with that which is more significant and general for Islām and the *Ummah* as a whole.

حكم فداء الأسرى بالمال

THE RULING REGARDING RANSOMING PRISONERS FOR WEALTH

According to the Shāfi'ī and Mālikī schools, Muḥammad ibn al-Ḥasan (al-Ḥanafī) رَحِمَهُ اللَّهُ, and one report from the Ḥanbalī school, it is permissible to ransom the disbelieving prisoners for wealth. However, the Mālikī's allow it only upon the condition that the wealth must be more that the POWs are actually worth. While ash-Sharkhasī رَحِمَهُ اللَّهُ in *as-Siyar al-Kabīr* relates that according to Muḥammad ibn Ḥasan, the permission is (further) restricted to the Muslims being in need of wealth.

The evidence they rely upon is found in *Sūrah Muḥammad* (47:4) wherein Allāh ﷻ says:

﴿فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً﴾

and either [confer] favor afterwards or ransom [them]

In addition, Abū Dāwūd رَحِمَهُ اللهُ narrates in his *Sunan: The Book of Jihād* (2691) that ‘Abdullāh ibn ‘Abbās رَضِيَ اللهُ عَنْهُ said:

أَنَّ النَّبِيَّ ﷺ جَعَلَ فِدَاءَ أَهْلِ الْجَاهِلِيَّةِ يَوْمَ بَدْرٍ أَرْبَعَ مِئَّةٍ

“The Prophet ﷺ set the ransom for the prisoners of Badr at four-hundred (*dirhams*) per head.”³⁴³

However, the Ḥanafī school, excluding the position of Muḥammad, one report from Aḥmad (ibn Ḥanbal), and likewise from Abū ‘Ubayd al-Qāsim ibn Salām رَحِمَهُ اللهُ, argue that it is impermissible to ransom the POWs for wealth. This is due to Allāh’s command in *Sūrah at-Tawbah* (9:5):

﴿فَاَقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ﴾

kill the polytheists wherever you find them

They also assert that it is not permissible to return the disbeliever back to *Dār al-Ḥarb* in order for him to continue waging war against the Muslims.

However, the correct opinion - and Allāh knows best - is that it is allowed to ransom the disbelieving POWs, due to the Prophet ﷺ doing so after the battles of Badr and Ḥunayn. In *Ṣaḥīḥ al-Bukhārī: The Book of Military Expeditions* (4318&4319):

³⁴³ Al-Albānī رَحِمَهُ اللهُ declared the narration authentic, except for the words ‘four-hundred.’ However, ‘Abd ar-Razzāq رَحِمَهُ اللهُ in his *Muṣannaf* (9394) and aṭ-Ṭabarānī رَحِمَهُ اللهُ in *al-Kabīr* (12154) narrated an authentic version from ibn ‘Abbās رَضِيَ اللهُ عَنْهُ that the ransom was not four-hundred, but **four-thousand** dirhams. Other scholars however are of the view that the ransom ranged between four-hundred and four-thousand dirhams depending on how wealthy the prisoner and his family were, and Allāh ﷻ knows best

أَنَّ مَرْوَانَ، وَالْمِسْوَرَ بْنَ مَخْرَمَةَ، أَخْبَرَاهُ أَنَّ رَسُولَ اللَّهِ ﷺ قَامَ حِينَ جَاءَهُ وَفَدَّ هَوَازِنَ مُسْلِمِينَ، فَسَأَلُوهُ أَنْ يَرُدَّ إِلَيْهِمْ أَمْوَالَهُمْ وَسَبْيَهُمْ، فَقَالَ لَهُمْ رَسُولُ اللَّهِ ﷺ: "مَعِيَ مَنْ تَرَوْنَ، وَأَحَبُّ الْحَدِيثِ إِلَيَّ أَصْدَقُهُ، فَاخْتَارُوا إِحْدَى الطَّائِفَتَيْنِ: إِمَّا السَّبْيَ، وَإِمَّا الْمَالَ، وَقَدْ كُنْتُ اسْتَأْنَيْتُ بِكُمْ". وَكَانَ أَنْظَرَهُمْ رَسُولُ اللَّهِ ﷺ بِضْعَ عَشْرَةَ لَيْلَةً حِينَ قَفَلَ مِنَ الطَّائِفِ، فَلَمَّا تَبَيَّنَ لَهُمْ أَنَّ رَسُولَ اللَّهِ ﷺ غَيْرَ رَادٍّ إِلَيْهِمْ إِلَّا إِحْدَى الطَّائِفَتَيْنِ، قَالُوا: فَإِنَّا نَخْتَارُ سَبْيَنَا، فَقَامَ رَسُولُ اللَّهِ ﷺ فِي الْمُسْلِمِينَ، فَأَتْنِي عَلَى اللَّهِ بِمَا هُوَ أَهْلُهُ ثُمَّ قَالَ: «أَمَّا بَعْدُ، فَإِنَّ إِخْوَانَكُمْ قَدْ جَاءُونَا تَائِبِينَ، وَإِنِّي قَدْ رَأَيْتُ أَنْ أَرُدَّ إِلَيْهِمْ سَبْيَهُمْ، فَمَنْ أَحَبَّ مِنْكُمْ أَنْ يُطَيَّبَ ذَلِكَ فَلْيَفْعَلْ، وَمَنْ أَحَبَّ مِنْكُمْ أَنْ يَكُونَ عَلَى حَظِّهِ حَتَّى نُعْطِيَهُ إِيَّاهُ مِنْ أَوَّلِ مَا يُفِيءُ اللَّهُ عَلَيْنَا فَلْيَفْعَلْ» فَقَالَ النَّاسُ: قَدْ طَيَّبْنَا ذَلِكَ يَا رَسُولَ اللَّهِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّا لَا نَدْرِي مَنْ أَذِنَ مِنْكُمْ فِي ذَلِكَ مِمَّنْ لَمْ يَأْذَنْ، فَارْجِعُوا حَتَّى يَرْفَعَ إِلَيْنَا عُرفَاؤُكُمْ أَمْرَكُمْ» فَرَجَعَ النَّاسُ، فَكَلَّمَهُمْ عُرفَاؤُهُمْ، ثُمَّ رَجَعُوا إِلَى رَسُولِ اللَّهِ ﷺ فَأَخْبَرُوهُ أَنَّهُمْ قَدْ طَيَّبُوا وَأَذِنُوا هَذَا الَّذِي بَلَغَنِي عَنْ سَبْيِ هَوَازِنَ

Marwān and al-Miswar ibn Makhramah narrate that when the delegate of Hawāzin came to Allāh's Messenger ﷺ declaring their conversion to Islām and asking him to return their properties and captives, Allāh's Messenger ﷺ got up and said, "With me (i.e. involved in this matter) are the people whom you see, and the most beloved speech to me is the truthful one. So choose one of two alternatives: either the captives or your property. I have been waiting for you." The Messenger of Allāh ﷺ then delayed the distribution of their spoils for over ten nights after his return from Ṭā'if. When they came to know that the Messenger of Allāh was not going to return to them except one of the two they said, "We prefer to have our captives." So Allāh's Messenger ﷺ stood amongst the Muslims, praised Allāh

as He deserves, and said, “*To proceed; your brothers have come to you repentant and I see (it fitting) to return their captives. Therefore, whoever of you likes to do that as a favour then he can do it, and whoever prefers to retain his share will be recompensed from the next wealth that Allāh gives us.*” The people said, “O Messenger of Allāh, we will do it willingly as a favour!” The Messenger of Allāh ﷺ said, “*We do not know which of you have agreed to it and which have not; so go back and let your chiefs forward us your decision.*” They went back and their chiefs spoke to them, and they returned to the Messenger of Allāh ﷺ informing him that all of them had agreed willingly, and have given their permission. (The sub-narrator said, “That is what reached me about the captives of Hawāzin.”) ³⁴⁴

Ibn Qudāmah رحمه الله says in *al-Mughnī* (9/222), “So this choice should not be according to desires, it should rather be in accordance with what is most advantageous. Thus, whenever (the leader) sees that the (overall) benefit lies in a particular option from the (legislated) options, he then becomes duty-bound (to act accordingly), and it is not permissible for him to turn away from that choice. However, whenever he is undecided (as to the superiority of one option over the others) it is more befitting for him to execute (the POWs).” ³⁴⁵

In *al-Injād* (pgs.174&175), ibn al-Munāṣif رحمه الله says, “The *Imām*’s perspective should be accordance with what is most beneficial for the Muslims. Therefore, when the bravery and audacity, opinion (in matters of warfare), and whatever is similar to these in terms of its (positive) impact on strengthening the might and perseverance of the enemy against the Muslims is feared; then it is more appropriate to execute (such a prisoner) [...]. While, whenever ransoming is the best interests of the Muslims, and would lead to their strengthening; then ransoming

³⁴⁴ A similar narration is also in *Sunan Abī Dāwūd: The Book of Jihād* (2693)

³⁴⁵ *al-Mughnī* (7451)

should take precedence. However, whoever it is hoped through freeing (without ransom), would embrace Islām, bring benefit to the Muslims by winning over the disbelievers, or by breaking their might; should be freed. However, if the *Imām* cannot decide upon one course of action over the others, then it is reasonable for him, even if after some time, to execute the POW [...] and Allāh knows best.”

حُكْمُ الْأَسِيرِ إِذَا أَسْلَمَ وَنَطَوَ الشَّرَاذِثِينَ THE RULING REGARDING THE PRISONER THAT EMBRACES ISLĀM

Al-Hāfīdh ibn Ḥajar رَحِمَهُ اللَّهُ says in *Fath al-Bārī* (6/152), “By consensus, if the prisoner embraces Islām (the option to) execute is rescinded.”

In *al-Mughnī* (9/222&223) ibn Qudāmah رَحِمَهُ اللَّهُ states:

“If the prisoner embraces Islām, he becomes a slave and the options to choose are rescinded, and as such his ruling becomes like that of the woman. Ash-Shāfi’ī, in one of the opinions reported from him holds this stance, while in the other; only the option to execute is dropped, and the other three options remain available, as is (i.e. according to what was) narrated by Muslim:

عَنْ عِمْرَانَ بْنِ حُصَيْنٍ، قَالَ: كَانَتْ تَقِيفُ حُلَفَاءَ ابْنِي عُقَيْلٍ، فَأَسْرَتْ تَقِيفَ رَجُلَيْنِ مِنْ أَصْحَابِ رَسُولِ اللَّهِ ﷺ، وَأَسْرَ أَصْحَابِ رَسُولِ اللَّهِ ﷺ، رَجُلًا مِنْ بَنِي عُقَيْلٍ، وَأَصَابُوا مَعَهُ الْعَضْبَاءَ، فَأَتَى عَلَيْهِ رَسُولُ اللَّهِ ﷺ وَهُوَ فِي الْوُثَاقِ، قَالَ: يَا

مُحَمَّدٌ، فَأَتَاهُ، فَقَالَ: «مَا شَأْنُكَ؟» فَقَالَ: بِمِ أَخَذْتَنِي، وَبِمِ أَخَذْتَ سَابِقَةَ الْحَاجِّ؟ فَقَالَ: «إِعْظَامًا لِدَلِكْ أَخَذْتُكَ بِجَرِيرَةٍ حُلَفَائِكَ ثَقِيفَ»، ثُمَّ انْصَرَفَ عَنْهُ، فَنَادَاهُ، فَقَالَ: يَا مُحَمَّدُ، يَا مُحَمَّدُ، وَكَانَ رَسُولُ اللَّهِ ﷺ رَحِيمًا رَقِيقًا، فَرَجَعَ إِلَيْهِ، فَقَالَ: «مَا شَأْنُكَ؟» قَالَ: إِنِّي مُسْلِمٌ، قَالَ: «لَوْ قُلْتَهَا وَأَنْتَ تَمْلِكُ أَمْرَكَ أَفْلَحْتَ كُلَّ الْفَلَاحِ»، ثُمَّ انْصَرَفَ، فَنَادَاهُ، فَقَالَ: يَا مُحَمَّدُ، يَا مُحَمَّدُ، فَأَتَاهُ، فَقَالَ: «مَا شَأْنُكَ؟» قَالَ: إِنِّي جَائِعٌ فَأُطْعِمْنِي، وَظَمَانٌ فَاسْقِنِي، قَالَ: «هَذِهِ حَاجَتُكَ»، فَفُدِيَ بِالرَّجُلَيْنِ

‘Imrān ibn Ḥusayn reported that the tribe of Thaqīf was the ally of Banū ‘Uqayl. Thaqīf took two men from amongst the Companions of the Messenger of Allāh ﷺ as prisoners. The Companions of the Messenger of Allāh ﷺ took one person from Banū ‘Uqayl as prisoner, and captured al-‘Aḍbā’ (the she-camel of the Prophet ﷺ) along with him. The Messenger of Allāh ﷺ came to him and he was tied with ropes. He said, “O Muḥammad!” He came near him and said, “What is the matter with you?” Thereupon he (the prisoner) said, “Why have you taken me as prisoner and why have you caught hold of one proceeding the pilgrims (the she-camel as she carried the noble Prophet ﷺ on her back and walked ahead of the multitudes)?” He (ﷺ) said, “(Yours is a great fault). I (i.e. my men) have caught you for the crime of your allies, Banū Thaqīf.” He then turned away. He again called him and said, “O Muḥammad! O Muḥammad!” and since Allāh’s Messenger ﷺ was very compassionate, and tenderhearted, he returned to him and said, “What is the matter with you?” He said, “I have become a Muslim,” whereupon he (ﷺ) said, “Had you said this when you had

been the master of yourself, you would have gained every success.” He then turned away. He (the prisoner) called him again saying, “O Muḥammad! O Muḥammad!” He came to him and said, “What is the matter with you?” He said, “I am hungry, feed me, and I am thirsty, so provide me with drink.” He (ﷺ) said, “That is (to satisfy) your want.” He was then ransomed for the two Companions (who had been captured by Thaḳīf).³⁴⁶

Consequently, the option to execute no longer applies due to his embracing Islām, although the remainder of options remain. However, as the *Ḥadīth* does not negate this, we hold the prisoner prohibited from executing becomes a slave by default like the female captive. Rather, the enslaved woman may be ransomed as Salamah ibn al-Akwa’ رضي الله عنه narrated that he went out on an expedition with Abū Bakr and was awarded a woman (from the *Ghanīmah*). He then gifted her to the Prophet ﷺ who, in turn, sent her to the Makkans in exchange for Muslim prisoners that they possessed.”³⁴⁷

Although, he (i.e. the *Amīr*) cannot ransom or release the prisoner except with the permission of the fighters (who participated in the battle), as the prisoner has now become part (of their) wealth (i.e. the *Ghanīmah*). However, it is possible that it is permissible to free him due to it being permissible to free him when he was a disbeliever. Therefore, now that he is a Muslim this should take precedence as making him a better Muslim calls for honouring and bestowing favour upon him, and it is his right that he should not be discouraged. Likewise, it is not permissible to return him back to the disbelievers unless

³⁴⁶ *Ṣaḥīḥ Muslim: The Books of Vows* (1641)

³⁴⁷ Refer to *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1755), *Sunan Abī Dāwūd: The Book of Jihād* (2697), and *Musnad Aḥmad* (16502, 16505, and 16537) for narrations detailing this incident

he possesses something that will prevent them from (harming) him, and it is only permissible to ransom him so that he may free himself from slavery.

However, if he embraces Islām before his capture, then it is *Ḥarām* to kill, enslave, or ransom him; similar to if he embraced Islām while he was in a fortress, or another hiding place that would have prevented the Muslim fighters from capturing him (in the first place)."

[End of ibn Qudāmāh quote]³⁴⁸

In addition, after the battle of Badr, al-‘Abbās رَضِيَ اللَّهُ عَنْهُ, who was captured amongst the disbelievers of Quraysh, was ordered to ransom himself despite being a Muslim. In his *Tafsīr* (4/359&360) ibn Kathīr رَحِمَهُ اللَّهُ narrates from ibn Ishāq رَحِمَهُ اللَّهُ:

The Quraysh sent to the Messenger of Allāh concerning ransoming their prisoners, and each tribe paid what was required for their prisoners. Al-‘Abbās said, “O Allāh’s Messenger! I became a Muslim before (the battle).” The Messenger of Allāh ﷺ said:

اللَّهُ أَعْلَمُ بِإِسْلَامِكَ فَإِنْ يَكُنْ كَمَا تَقُولُ فَإِنَّ اللَّهَ يَجْزِيكَ وَأَمَّا ظَاهِرُكَ فَقَدْ كَانَ عَلَيْنَا فَافْتَدِ نَفْسَكَ وَابْنِي أَخِيكَ نَوْفَلَ بْنِ الْحَارِثِ بْنِ عَبْدِ الْمُطَّلِبِ وَعَقِيلَ بْنِ أَبِي طَالِبٍ بْنِ عَبْدِ الْمُطَّلِبِ، وَحَلِيفَكَ عُتْبَةَ بْنَ عَمْرِو أَخِي بَنِي الْحَارِثِ بْنِ فِهْرٍ

“Allāh knows best if you are Muslim! If what you are claiming is true, then Allāh will compensate you. As for your apparent actions - they were against us. Therefore, ransom yourself, as well as your nephews Nawfal bin al-Ḥārith bin ‘Abdul-Muṭṭalib and ‘Aqīl bin Abū Ṭālib bin

³⁴⁸ *Al-Mughnī* (7452)

‘Abdul-Muṭṭalib, and also your ally ‘Utbah bin ‘Amr, from Banī al-Ḥārith bin Fihr.” Al-‘Abbās said, “I do not have that (kind of money), O Messenger of Allāh!” The Messenger ﷺ replied:

فَأَيْنَ الْمَالُ الَّذِي دَفَنْتَهُ أَنْتَ وَأُمُّ الْفَضْلِ؟ فَقُلْتَ لَهَا إِنْ أَصِبْتُ
فِي سَفَرِي هَذَا، فَهَذَا الْمَالُ الَّذِي دَفَنْتَهُ لِبَنِي الْفَضْلِ وَعَبْدِ اللَّهِ
وَقُتْمٍ

“What about the wealth that you and Umm al-Faḍl buried and you said to her, ‘If I am killed in this battle, then this money that I buried is for my children al-Faḍl, ‘Abdullāh, and Qutham.’?” Al-‘Abbās said, “By Allāh! O Messenger of Allāh I know that you are (truly) Allāh’s Messenger, for this is a thing that none except Umm al-Faḍl and myself knew. However, O Messenger of Allāh, could you count towards my ransom the twenty *Ūqiyah*³⁴⁹ that you took from me (in the battle).” The Messenger of Allāh said:

لَا ذَاكَ شَيْءٌ أَعْطَانَا اللَّهُ تَعَالَى مِنْكَ

“No, for that was money that Allāh made as war spoils for us from you.” So Al-‘Abbās ransomed himself, his two nephews and an ally, and Allāh revealed this verse (8:70):

﴿يَا أَيُّهَا النَّبِيُّ قُلْ لِمَنْ فِي أَيْدِيكُمْ مِنَ الْأَسْرَىٰ إِنْ يَعْلَمِ اللَّهُ فِي
قُلُوبِكُمْ خَيْرًا يُؤْتِكُمْ خَيْرًا مِّمَّا أُخِذَ مِنْكُمْ وَيَغْفِرَ لَكُمْ وَاللَّهُ غَفُورٌ
رَّحِيمٌ﴾

³⁴⁹ An *Ūqiyah* (أوقية) is approximately 23.78g of gold, which is worth approximately \$1,150 in today’s currency

O Prophet, say to whoever is in your hands of the captives, "If Allāh knows [any] good in your hearts, He will give you [something] better than what was taken from you, and He will forgive you; and Allāh is Forgiving and Merciful."

Al-‘Abbas commented, “After I became Muslim, Allāh gave me twenty servants in place of the twenty *Ūqiyah* I lost, and I am still hoping for Allāh’s forgiveness.”³⁵⁰

Likewise, al-Bukhārī رَحِمَهُ اللَّهُ narrates in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (3048) from Anas ibn Mālīk رَضِيَ اللَّهُ عَنْهُ:

أَنَّ رِجَالًا مِنَ الْأَنْصَارِ اسْتَأْذَنُوا رَسُولَ اللَّهِ ﷺ، فَقَالُوا: يَا رَسُولَ اللَّهِ، أَذْنُ فَلَنْتَرْكُ لِابْنِ أُخْتِنَا عَبَّاسٍ فِدَاءَهُ، فَقَالَ: «لَا تَدْعُونَ مِنْهَا دِرْهَمًا»

Some *Ansārī* men asked permission from the Messenger of Allāh ﷺ saying, “O Messenger of Allāh! Permit us not to take ransom for our nephew al-‘Abbās.” The Prophet ﷺ replied, “Do not leave a single dirham of it.”

³⁵⁰ Al-Qurtubī also mentions this incident in his *Tafsīr* (4/408&409). He additionally states that, “(The Prophet ﷺ) ordered him to ransom his two nephews - ‘Aqīl ibn Abī Ṭālib and Nawfal ibn al-Ḥārith - so he did so paying eighty *Ūqiyah* for them both, and for himself eighty. In addition to the twenty *Ūqiyah* taken from him during the fighting, brought to feed the (Qurayshī) fighters of Badr, as he (al-‘Abbās) was one of ten people responsible for supplying (the army). His turn was to be one the day of Badr, but the fighting began before he could feed the army [...] So that day he lost one-hundred and eighty (180) *Ūqiyah*.” (Equivalent to approximately \$206,785 in today’s currency)

CHAPTER SUMMARY

With the exception of women and children, who are not to be executed (unless they fight), the disbelieving prisoners of war (POWs) according to agreement of the majority of scholars are to be either:

- 1) Executed
- 2) Enslaved
- 3) Freed, or
- 4) Ransomed

This choice is to be made in accordance with that which the leader sees as being the most beneficial for the *Ummah* as a whole, and not according to his whims and desires, personal gain, or localised benefit.

The option to execute is revoked for the prisoner who embraces Islām; however, the remaining options remain applicable.

The POW can be beaten if there is a benefit for Islām in doing so, nevertheless this should not reach the level of transgression and oppression. It must also be understood that both the *Sīrah* of the Prophet ﷺ and contemporary history stand as testament that often beating and torture do not achieve the desired outcomes. Rather, it is highly likely these things, more often than not, prove counterproductive.

Finally, the act of mutilation is forbidden in Islām, and only becomes permissible in the case of *Qiṣāṣ* (i.e. retaliation for the disbelievers' mutilation of killed Muslims).

CHAPTER 18

الأجير المسلم

ISSUES RELATED TO THE MUSLIM POW

حكم الأجير إذا قتل نفسه خشية أن يعذبه

العدو أو يقتله

THE RULING REGARDING THE MUSLIM PRISONER WHO KILLS HIMSELF FEARING THE ENEMY WILL KILL OR TORTURE HIM

The scholars agree the one who kills himself, or has (i.e. orders) another kill him in an attempt to escape imprisonment or torture has committed suicide - one of the Major Sins.

In *Marātib al-Ijmā'* (p.157) ibn Ḥazm رَحِمَهُ اللهُ states that, "There is consensus that it is not permissible for one to kill himself, amputate a limb, or inflict pain upon himself, unless he does so for the purposes of (medical) treatment."

The evidence for this is the generality of the words of Allāh ﷻ in *Sūrah an-Nisā* (4:29):

﴿وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا﴾

And do not kill yourselves. Indeed, Allāh is to you ever Merciful.

Likewise the Prophet ﷺ said, in a narration collected in *Ṣaḥīḥ al-Bukhārī: The Book of Medicine* (5778) and *Ṣaḥīḥ Muslim: The Book of Faith* (109):

مَنْ تَرَدَّى مِنْ جَبَلٍ فَقَتَلَ نَفْسَهُ، فَهُوَ فِي نَارِ جَهَنَّمَ يَتَرَدَّى فِيهِ خَالِدًا مُخَلَّدًا فِيهَا أَبَدًا، وَمَنْ تَحَسَّى سُمًّا فَقَتَلَ نَفْسَهُ، فَسُمُّهُ فِي يَدِهِ يَتَحَسَّاهُ فِي نَارِ جَهَنَّمَ خَالِدًا مُخَلَّدًا فِيهَا أَبَدًا، وَمَنْ قَتَلَ نَفْسَهُ بِحَدِيدَةٍ، فَحَدِيدَتُهُ فِي يَدِهِ يَجَأُ بِهَا فِي بَطْنِهِ فِي نَارِ جَهَنَّمَ خَالِدًا مُخَلَّدًا فِيهَا أَبَدًا

“Whoever purposely kills himself by throwing himself from a mountain, will be in the Fire falling down into it and abiding therein forever. Whoever kills himself by drinking poison, will be carrying poison in his hand drinking it in the Fire wherein he will abide eternally; and whoever kills himself with an iron weapon, will be carrying that weapon in his hand stabbing his abdomen with it in the Fire wherein he will abide eternally.”³⁵¹

In another narration in both *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (3062) and *Ṣaḥīḥ Muslim: The Book of Faith* (111), Abū Hurayrah narrates رَضِيَ اللَّهُ عَنْهُ:

شَهِدْنَا مَعَ رَسُولِ اللَّهِ ﷺ حُتَيْنًا، فَقَالَ لِرَجُلٍ مِمَّنْ يُدْعَى بِالْإِسْلَامِ: «هَذَا مِنْ أَهْلِ النَّارِ»، فَلَمَّا حَضَرْنَا الْقِتَالَ قَاتَلَ الرَّجُلُ قِتَالًا شَدِيدًا،

³⁵¹ Also in *Jāmi' at-Tirmidhī: The Book of Medicine* (2179)

فَأَصَابَتْهُ جِرَاحَةٌ، فَقِيلَ: يَا رَسُولَ اللَّهِ، الرَّجُلُ الَّذِي قُلْتَ لَهُ آتِفًا: «إِنَّهُ مِنْ أَهْلِ النَّارِ» فَإِنَّهُ قَاتَلَ الْيَوْمَ قِتَالًا شَدِيدًا، وَقَدْ مَاتَ، فَقَالَ النَّبِيُّ ﷺ: «إِلَى النَّارِ»، فَكَادَ بَعْضُ الْمُسْلِمِينَ أَنْ يَرْتَابَ، فَبَيْنَمَا هُمْ عَلَى ذَلِكَ إِذْ قِيلَ: إِنَّهُ لَمْ يَمُتْ، وَلَكِنَّ بِهِ جِرَاحًا شَدِيدًا، فَلَمَّا كَانَ مِنَ اللَّيْلِ لَمْ يَصْبِرْ عَلَى الْجِرَاحِ، فَقَتَلَ نَفْسَهُ، فَأُخْبِرَ النَّبِيُّ ﷺ بِذَلِكَ، فَقَالَ: «اللَّهُ أَكْبَرُ، أَشْهَدُ أَنِّي عَبْدُ اللَّهِ وَرَسُولُهُ»، ثُمَّ أَمَرَ بِلَالًا فَنَادَى فِي النَّاسِ: «أَنَّهُ لَا يَدْخُلُ الْجَنَّةَ إِلَّا نَفْسٌ مُسْلِمَةٌ، وَأَنَّ اللَّهَ يُؤَيِّدُ هَذَا الدِّينَ بِالرَّجُلِ الْفَاجِرِ»

“We participated in the Battle of Hunayn along with the Messenger of Allāh ﷺ. He (the Prophet) said about a man who claimed to be a Muslim, that he was one of the denizens of the Fire (of Hell). When we were in the thick of the battle that man fought desperately and was wounded. It was said, ‘Messenger of Allāh, the person whom you at first called as the denizen of the Fire fought desperately and died.’ Upon this the Messenger of Allāh ﷺ remarked, ‘He is doomed to the Fire (of Hell).’ Some men were on the verge of doubt (about his fate) when it was said that he was not dead but fatally wounded. When it was night, he could not stand the (pain of his) wound and killed himself. The Messenger ﷺ was informed of that. He commented, ‘Allāh is Great, I bear testimony to the fact that I am the slave of Allāh and His messenger.’ He then commanded Bilāl to announce to the people, ‘That none but a Muslim would enter Paradise. Indeed Allāh helps this faith even by an evil man.’”

Additionally, in both *Ṣaḥīḥ al-Bukhārī: The Book of Stories of the Prophets* (3463) and *Ṣaḥīḥ Muslim: The Book of Faith* (113), al-Ḥasan رَحِمَهُ اللَّهُ said:

إِنَّ رَجُلًا مِمَّنْ كَانَ قَبْلَكُمْ خَرَجَتْ بِهِ قُرْحَةٌ، فَلَمَّا آذَتْهُ انْتَرَعَ سَهْمًا مِنْ كِنَانَتِهِ فَنَكَأَهَا، فَلَمْ يَزِفْ الدَّمَ حَتَّى مَاتَ، قَالَ رَبُّكُمْ: «قَدْ حَرَمْتُ عَلَيْهِ الْجَنَّةَ»

“A person belonging to the people of the past suffered from a boil, when he could no longer endure the pain, he drew out an arrow from his quiver and pierced it, and the bleeding did not stop till he died. Your Lord said, ‘*I have indeed forbidden his entry into Paradise.*’”³⁵²

Then he (al-Ḥasan) stretched his hand towards the mosque and said, “By Allāh, Jundub transmitted this narration to me from the Messenger of Allāh ﷺ in this very mosque.”

Despite suicide being from the Major Sins in Islām, as indicated by the fact that accompanying it is the threat of punishment, it nevertheless does not cause its doer to exit from the fold of Islām. *Al-Imām* ibn Baṭṭāl رحمه الله said, “The jurists and *Ahl as-Sunnah* are all united that the one who kills himself does not exit the fold of Islām, and that he should be prayed upon...”³⁵³

³⁵² The wording is Muslim’s

³⁵³ *Sharḥ ibn Baṭṭāl* (3/349). However, many hold that the *Imām* of the Muslims should not lead the funeral prayer upon him, owing to the narration in *Ṣaḥīḥ Muslim: The Book of the Funeral Prayer* (978) wherein the Prophet ﷺ did not pray over the man that committed suicide during one of the battles. In such cases, someone other than the *Imām* should lead the funeral prayer. This is unlike those who misplaced their loyalty, siding with those whom Allāh decreed to die as disbelievers and be placed in the Fire eternally, and who deem unacceptable praying upon the Muslim who they consider committed suicide or undertook operations that led to their death at the hands of the disbelievers. Such acts of ‘solidarity’ with the enemies of Allāh betray the depths many Muslims in the West have unfortunately sunk to, and in many cases, fall into disbelief due to failing to fulfil the minimum requirement as far as *al-Walā wa’l-Barā* is concerned, indicated by Allāh’s ﷻ words (58:22):

Therefore, the *Mujāhid* is prohibited from committing suicide fearing enemy capture or torture. Instead, it is *Wājib* upon him to remain patient with Allāh's Decree, and if he is able, to fight to the death, which is preferable to accepting capture at the hands of the disbelievers.

Ibn Qudāmah رَحِمَهُ اللَّهُ says in *al-Mughnī* (9/319), “And if he fears capture, then rather than surrendering himself to imprisonment, it is better he fights to the death. (For if he does so) he will succeed in attaining an immense reward and high station (in Paradise), and will have saved himself from succumbing to the control of the disbelievers; their torture, enslavement, and tribulations.”³⁵⁴

حكم لمن قتل نفسه خوفاً إفساء الأسرار

THE RULING REGARDING THE ONE WHO KILLS HIMSELF TO PROTECT INFORMATION

In the preceding sub-chapter, the case of the one who commits suicide due to a lack of patience or displeasure with Allāh's Decree regarding his lot in this world was examined. Now, the emphasis is on the case of the one who kills himself fearing for the Muslims, attempting to protect them from harm, and acting upon the principle:

يحتمل الضرر الخاص لدفع الضرر العام

﴿لَا تَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ وَرَسُولَهُ وَلَوْ كَانُوا آبَاءَهُمْ
أَوْ أَبْنَاءَهُمْ أَوْ إِخْوَانَهُمْ أَوْ عَشِيرَتَهُمْ﴾

You will not find a people who believe in Allāh and the Last Day having affection for those who oppose Allāh and His Messenger, even if they were their fathers or their sons or their brothers or their kindred.

³⁵⁴ *Al-Mughnī* (7622)

‘The enduring of the specific (i.e. lesser) harm in order to ward off the general (i.e. greater) harm.’

As it relates to the issue of the imprisonment of the Muslim in the context of *Jihād*, this topic relates specifically to killing one’s self with the intention of protecting information contained within the mind of the captive from exposure to the enemies, under the duress of torture, psychoactive substances (i.e. truth serums), and their likes.

However, in order to distinguish between the topic of this discussion and the impermissible suicide that has preceded, the act of suicide, as understood by Islām’s scholars, must first be defined.

تعريف الانتحار

DEFINITION OF SUICIDE

Like many other terms and concepts discussed within this work, suicide has both linguistic and legal (*Shar’ī*) definitions.

The linguistic definition of suicide (*an-Intihār*) according to the Arabic language is, “The man committed suicide” - meaning he killed himself.³⁵⁵

Although the term’s *Shar’ī* definition according to the jurists is more specific than it’s linguistic meaning, as can be seen in al-Qurṭubī’s رحمه الله commentary on the verses (4:29&30):

³⁵⁵ Refer to classic Arabic dictionaries such as *Lisān al-‘Arab*, *Tāj al-‘Urūs*, and *al-Qāmūs al-Muḥīṭ*, under the word (نحر) *Naḥr*

﴿وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ٢٩﴾
 وَمَنْ يَفْعَلْ ذَلِكَ عُدْوَانًا وَظُلْمًا فَسَوْفَ نُصْلِيهِ نَارًا وَكَانَ
 ذَلِكَ عَلَى اللَّهِ يَسِيرًا ﴿٣٠﴾

And do not kill yourselves [or one another]. Indeed, Allāh is to you ever Merciful. And whoever does that in aggression and injustice - then We will drive him into a Fire. And that, for Allāh, is [always] easy.

He states (3/141&142), "The consensus of scholars is that the verse means that people are prohibited from killing one another. Its literal wording also implies the prohibition for a person to kill himself due to any worldly desire, or from seeking wealth (in such a way that he endangers his life). The verse additionally implies, 'Do not kill yourselves due to misery or anger.'"

As such, the killing of ones' self that is prohibited and is referred to as suicide, is the taking of one's own life due to a worldly affair having no valid reason found in the *Sharī'ah*.

However seeking, or contributing directly or indirectly, to one's own death due to an Islamically legislated reason does not fall under the definition of suicide and its accompanying prohibition. Rather, it may even be from the greatest and most praiseworthy of deeds. This becomes clear when one contemplates upon the verses in *Sūrah al-Baqarah*, such as Allāh's words (2:195):

﴿وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ ١٩٥﴾

And spend in the way of Allāh and do not throw [yourselves] with your [own] hands into destruction

[by refraining from spending]. And do good; indeed, Allāh loves the doers of good.

And (2:207):

﴿وَمِنَ النَّاسِ مَن يَشْرِى نَفْسَهُ ابْتِغَاءَ مَرْضَاتِ اللَّهِ وَاللَّهُ
رَءُوفٌ بِالْعِبَادِ﴾ (207)

And of the people is he who sells himself, seeking means to the approval of Allāh. And Allāh is kind to [His] servants.

In his *Tafsīr* (1/537&538) ibn Kathīr رَحِمَهُ اللَّهُ comments on the first verse (2:195) saying:

Aslam Abū ‘Imrān said, “We were at (the siege of) Constantinople. Then, ‘Uqbah bin ‘Amr was leading the Egyptian forces, while the Syrian forces were led by Faḍalah bin ‘Ubayd. Later on, a huge column of Roman (Byzantine) soldiers departed the city, and we stood in lines against them. A Muslim man attacked the Roman lines until he broke through them and came back to us. The people shouted, ‘All praise is due to Allāh! He is sending himself to certain demise.’ Abū Ayyūb said, ‘O people! You explain this verse the wrong way; It was revealed about us, the *Anṣār* when Allāh gave victory to His religion and its following increased. We said to each other, ‘It would be better for us now if we return to our estates and attend to them.’ Then Allāh revealed this verse (2:195).’”

Abū Bakr bin ‘Ayyāsh reported that Abu Ishāq as-Subay’ī related that a man said to al-Barā’ bin ‘Āzib رَضِيَ اللَّهُ عَنْهُ, “If I attack the enemy lines alone and they kill me, would I be

throwing myself into destruction?" He replied, "No. Allāh said to His Messenger ﷺ:

﴿فَقَاتِلْ فِي سَبِيلِ اللَّهِ لَا تُكَلَّفُ إِلَّا نَفْسَكَ﴾

So fight, [O Muhammad], in the cause of Allāh; you are not held responsible except for yourself. (4:84) That verse (i.e. 2:195) is about (refraining from) spending (upon *Jihād*)."

Ibn Marduyah reported this *Ḥadīth*, as well as al-Ḥākim in his *Mustadrak* who said; "It meets the criteria of the two Shaykh's (i.e. al-Bukhārī and Muslim) but they did not record it." Ath-Thawrī and Qays bin ar-Rabī' related it from al-Barā' رَضِيَ اللَّهُ عَنْهُ, but added: ***You are not held responsible except for yourself.*** (4:84) "Destruction refers to the man who sins and refrains from repenting, thus throwing himself to destruction."

Ibn Kathīr (1/581) also comments on the second verse (2:207) saying, "When Ḥishām bin 'Amr (singlehandedly) penetrated the lines of the enemy, some people criticized him. 'Umar bin al-Khaṭṭāb and Abu Hurayrah رَضِيَ اللَّهُ عَنْهُمَا refuted them and recited this verse: ***And of the people is he who sells himself, seeking means to the approval of Allāh. And Allāh is kind to [His] servants.***"

Additionally, in the narration collected by Muslim رَضِيَ اللَّهُ عَنْهُ in his *Ṣaḥīḥ: The Book of Governance* (1889), the Messenger of Allāh ﷺ said:

مِنْ خَيْرِ مَعَاشِ النَّاسِ لَهُمْ، رَجُلٌ مُمَسِكٌ عِنَانَ فَرَسِهِ فِي سَبِيلِ اللَّهِ،
يَطِيرُ عَلَى مَتْنِهِ، كُلَّمَا سَمِعَ هَيْعَةً، أَوْ فَرْعَةً طَارَ عَلَيْهِ، يَتَنَغَّى الْقَتْلَ
وَالْمَوْتَ مَظَانَّهُ

“Among the best of people, is a man who clutches the reigns of his horse in the path of Allāh, flying on its back; whenever he hears a cry (for battle) or an advance towards the enemy - he races to it, eagerly seeking death and to be slain...”³⁵⁶

Likewise, al-Bayhaqī رحمه الله narrated in his *Sunan al-Kubrā* (9/100) that ash-Shāfi’ī رحمه الله said, “One of the *Anṣār* was late behind when the massacre of the Companions next to the well of Ma’ūnah took place. By the time he arrived vultures were already devouring his companions. He told ‘Amr ibn Umayyah: ‘I am going to go ahead to the enemy, so they can kill me (too). I don’t want to be left behind when our companions have been slain.’ He did as he had said, and was killed. When ‘Amr ibn Umayyah (the only survivor of the incident) told the Messenger of Allāh ﷺ about what had happened, the Messenger of Allāh ﷺ said good words about the man and then asked ‘Amr ibn Umayyah; ‘And why didn’t you go with him?’”³⁵⁷

It is possible to derive from the above accounts that, like the general prohibition on killing (disbelieving) women and children, there are also exceptions to the general prohibition regarding causing one’s own death. As such, in accordance with the well-known *Ḥadīth* narrated in *Ṣaḥīḥ al-Bukhārī: The Book of the Beginning of Revelation* (1):

إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى

³⁵⁶ Also in *Ṣaḥīḥ ibn Mājah: The Book of Tribulations* (3977) and *Ṣaḥīḥ al-Jāmi’* (5915)

³⁵⁷ Ibn Nuḥḥās رحمه الله also records this narration in *Mashārī’ al-Ashwāq* (pgs.527&528, and p.322 in the English abridgement). According to ibn Kathīr رحمه الله, this incident took place in the month of *Ṣafar* in the 4th year *Hijrī*. Various accounts of this incident can be found in *The Noble Life of the Prophet ﷺ* (2/1234-1244), *The Sealed Nectar* (pp.299-301), and *The Life of the Prophet Muḥammad: al-Sīra al-Nabawīyyah* (3/97-100)

“The reward of deeds depends upon the intentions, and every person will be rewarded according to what he intended,” the intention behind the act of killing one’s self has a crucial role to play: It distinguishes between the act that is one of Islām’s Major Sins, and one that is permissible, and at times even praiseworthy. For if this was not the case, *Jihād* in the cause of Allāh would cease to exist - as the believer knows (and hopes) that by his action of waging *Jihād*, he is ultimately contributing towards his own death. However, it is known by all believers that to die for the sake of Allāh, Islām, and one’s fellow believers is the most honourable death one can aspire to, and as such, Allāh ﷻ states in *Sūrah at-Tawbah* (9:111):

﴿إِنَّ اللَّهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنْ لَهُمُ
الْجَنَّةُ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ فَيَقْتُلُونَ وَيُقْتَلُونَ وَعْدًا
عَلَيْهِ حَقًّا فِي التَّوْرَةِ وَالْإِنْجِيلِ وَالْفُرْآنِ وَمَنْ أَوْفَى
بِعَهْدِهِ مِنَ اللَّهِ فَاسْتَبْشِرُوا بِالَّذِي بَايَعْتُمْ بِهِ وَذَلِكَ
هُوَ الْفَوْزُ الْعَظِيمُ﴾

Indeed, Allāh has purchased from the believers their lives and their properties [in exchange] for that they will have Paradise. They fight in the cause of Allāh, so they kill and are killed. [It is] a true promise [binding] upon Him in the Torah and the Gospel and the Qur’ān. And who is truer to his covenant than Allāh? So rejoice in your transaction which you have contracted. And it is that which is the great attainment.

So, is it just that one equates the person despairing of Allāh’s mercy that has hastened their own death due to their displeasure and lack of patience over a worldly matter, with one who hastens

his death due to his immense faith in Allāh and out of a spirit of self-sacrifice for Islām, its sanctities, and believers?

﴿لَا يَسْتَوُونَ عِنْدَ اللَّهِ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ﴾³⁵⁸

They are not equal in the sight of Allāh. And Allāh does not guide the wrongdoing people.³⁵⁸

With this understood, the subject of the Muslim POW killing himself to protect information can now be considered.

Firstly, two factors warrant examining before the lifting of the general prohibition regarding suicide, and permitting the believer to take his own life in such a situation:

- 1) The nature of the information at stake
- 2) The nature of the carrier of the information

The **information** must be of the nature that if it fell into the hands of the disbelieving enemies, it would likely lead to the loss of life and limb of other believers in general, and the *Mujāhidīn* specifically. Such as critical information regarding the locations or identities of individual or groups of *Mujāhidīn*, their vehicles, bases, safe houses, defences, camps, weapons caches, security procedures, communications methods, current and/or future plans (especially military), and their likes.

With regards to **the carrier of the information** - there are two general types:

The **first** is confident that he will be able to remain patient until he is either released or killed, withstanding any torture he will likely to be subjected to by his captors, thus retaining whatever information he possess without divulging it. Alternatively, he

³⁵⁸ *Sūrah at-Tawbah* (9:19)

feels confident that if he is forced to talk, he will be able to successfully lie to, or mislead his captors regarding the divulgence of any information potentially life threatening to his fellow believers.

While the **second** is overwhelmingly sure that he, despite trying his best, would not be capable of withstanding any likely torture or substances his captors will subject to him. Nor does he feel he will be able to lie or deceive them regarding the information he possesses, or escape their torture or captivity in any other way.

Accordingly, the second type of person who carries critical information that if disclosed would likely lead to the death or serious harm of his fellow believers and *Mujāhidīn*, is permitted to commit 'suicide' if captured by an enemy likely to torture him until he divulges all such information. Along with this, is the impermissibility of such a person allowing himself to be captured if he has the ability to escape or fight to the death. While the one not possessing an significant information, or the one who overwhelmingly feels he would be able to remain patient and steadfast in the face of torture, is not permitted to take his own life to escape capture or torture. However, it still remains preferable for him to fight to the death rather than accepting capture at the hands of the disbelievers, as will be explained shortly - if Allāh wills. ³⁵⁹

³⁵⁹ Although not specifically mentioned by any of the contemporary scholars, another condition that may be placed upon the permissibility of the Muslim POW killing himself is that of the enemy, and whether they have the capacity (even if indirectly, such as by employing a third party) to act upon any information he divulges. Although not likely, it is a possibility that the *Mujāhid* finds himself against a local or regional enemy lacking the capability to direct artillery, missile, air or drone strikes against any fleeting targets that the acquisition of such information might present. Such situations may present themselves during the onset or early days of conflicts, before the local disbelieving enemy has had the opportunity, or incentive to ally with bigger, more powerful global allies - and Allāh ﷻ knows best.

The following conditions should be present in the individual to legitimise him taking his own life in the aforementioned situation:³⁶⁰

- 1) His intention should be solely for the sake of Allāh; and by undertaking this act he is seeking to protect the Muslims and their sanctities.
- 2) The consequences of the information he carries should be of the nature, that if it falls into the hands of the disbelievers, it would indeed be severe upon the Muslims.
- 3) He is sure that he will not be able to remain patient in the face of torture. However, if he is able to withstand the torture and remain patient, then suicide in such an instance is *Harām*, and not permissible.
- 4) He has actually fallen into the hands of the enemies or there is little doubt that he is about to,³⁶¹ as opposed to the mere existence of the possibility.

While if surrounded, the *Mujāhid* will fall into one of two situations:

- a) If the possibility for escape exists, of the possibility to fight until he is able to escape (or gain victory) or is killed fighting, then it is not permissible for him to kill himself. Rather it becomes *Wājib* upon him to struggle using all means at his disposal in order to flee, or force his enemies to have to kill him.

³⁶⁰ Refer to *al-Mukhtār fī Ḥukm al-Intihār Khawf Ifshā' al-Asrār* (p.69), *al-'Amaliyāt al-Istishhādīyyah fī'l-Mīzān Fiqhī* (p.110), and *al-A'māl al-Fidā'iyyah Ṣūruhā wa Aḥkāmuhā Fiqhiyyah* (p.180)

³⁶¹ Such as the wounded fighter, who has run out of ammunition and has been surrounded by the enemy. His wounds prevent him from escape, his lack of ammunition prevent him from fighting back, and the enemy is aware of his location and predicament

- b) There does not exist any possibility of escape or resistance, and appears exceedingly likely that he will be captured, and along with this is the likelihood that the enemy will compel him to reveal secret information, such as if he is a well-known leader.³⁶²

It is reported from Aḥmad رحمه الله in *Masā'il Ṣāliḥ* (2/469) that he was asked, "Supposing the prisoner (of war) obtains a sword or (other) weapons, then he attacks them (i.e. his disbelieving captors) not knowing whether his attack against them will be successful or not?" He replied, "I heard that when 'Umar (رضي الله عنه) was asked by a man: 'Did my father, or my (maternal) uncle, throw himself into destruction with his own hands?' So 'Umar replied, '(Never), that is the (essence of) buying the Hereafter with this life!'"³⁶³

Abū Dāwūd رحمه الله said in his *Masā'il* (p.330), "I heard Aḥmad saying, 'It is more beloved to me that, if a person knows he is going to be captured, he fights to the death.' He also said, 'He should not allow himself to be captured, (for indeed) imprisonment is severe.'" ³⁶⁴

In *al-Furū'* (10/243) ibn Muflīḥ رحمه الله narrated, "Aḥmad said, 'How it amazes me that someone would allow himself to be captured!' He also said, 'That he fights is more beloved to me, (for) imprisonment is severe and there is no escaping death.'" ³⁶⁵

³⁶² It is preferable in such instances for him to wear an explosive belt or vest, and then attack the enemy, submerging himself into their ranks until he feels confident that if he detonates his explosives he will - by the permission of Allāh - injure or kill a large number of them. Combining with this action both the intention to protect the Muslims, and to undertake a Martyrdom operation amongst the enemies of Allāh ﷻ, and He certainly knows best

³⁶³ *Masā'il al-Imām Aḥmad Riwāyah ibn Abī'l- Faḍl Ṣāliḥ* (1171). A similar narration was narrated by ibn Abī Shaybah رحمه الله in his *Muṣṣanaf* (5/303) with a *Ṣaḥīḥ* chain of narration, in *Mashāri' al-Ashwāq* (p.524, and p.321 in the English abridgement)

³⁶⁴ *Masā'il al-Imām Aḥmad Riwāyah Abī Dāwūd as-Sijistānī* (1581)

Additionally, in his *Ṣaḥīḥ*, ibn Ḥibbān رَحِمَهُ اللَّهُ, in the chapter of *Obedying the Imām*, entitled a sub-chapter, *Mentioning the Permissibility for a man to Sacrifice Himself for his Imām*, before proceeding to narrate the *Ḥadīth* of Abī Ṭalḥah رَضِيَ اللَّهُ عَنْهُ (4582):

عَنْ أَنَسٍ، أَنَّ أَبَا طَلْحَةَ كَانَ يَرْمِي بَيْنَ يَدَيْ رَسُولِ اللَّهِ ﷺ، فَكَانَ النَّبِيُّ ﷺ يَرْفَعُ رَأْسَهُ مِنْ خَلْفِهِ، لِيَنْظُرَ أَيْنَ يَقَعُ نَبْلُهُ، فَيَتَطَاوَلُ أَبُو طَلْحَةَ بِصَدْرِهِ يَتَّقِي بِهِ رَسُولُ اللَّهِ ﷺ يَقُولُ هَكَذَا يَا نَبِيَّ اللَّهِ جَعَلَنِي اللَّهُ فِدَاكَ نَحْرِي دُونَ نَحْرِكَ

Anas رَضِيَ اللَّهُ عَنْهُ narrates, “Abū Ṭalḥah stood in front of the Messenger of Allāh ﷺ firing arrows, and the Prophet ﷺ would raise his head from behind him to look at where they would land. Therefore Abu Ṭalḥah used his chest as a shield in front of the Messenger of Allāh ﷺ fearing (lest he be hit with an arrow), and saying, ‘Like this O Prophet of Allāh, may Allāh sacrifice me for your sake, my neck instead of your neck!’”³⁶⁵

Likewise, Shaykh Muḥammad ibn Ibrāhīm Āl ash-Shaykh رَحِمَهُ اللَّهُ, the former *Mufī* of the Arabian Peninsula, ruled that it was permissible under such circumstances for the POW to kill himself. He was asked by some of the Algerian *Mujāhidīn* concerning the issue of the *Mujāhidīn* being captured by the French, then being forced under the duress of torture and the influence of drugs to divulge the locations and secrets of the *Mujāhidīn*. He replied to them, “If what you have said is true, then it is permissible, with the evidence being: ‘We believe in the

³⁶⁵ The chain of this narration is authentic according to the conditions of Muslim. Similar narrations are also in *Ṣaḥīḥ al-Bukhārī: The Virtues of the Anṣār* (3811); *The Book of Expeditions* (4064), and in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1811)

*Lord of the boy!*³⁶⁶ And the saying of some of the scholars that the boat is ...;³⁶⁷ up until the point of the person's killing himself, so this principle (of being obliged to opt for the lesser of two evils) is clear cut, and there is no other option for him except to be killed (i.e. kill himself).”³⁶⁸

In conclusion, this chapter has been kept intentionally brief due to two reasons; the first being that many of its evidences will be contained in the coming chapter on Martyrdom Operations; and there already exists a treatise, specifically dedicated to this topic, translated into English that readers are recommended to consult.³⁶⁹

تنبيه

WARNING:

For those unaware or unfamiliar with the pressures of imprisonment and torture, it must be highlighted due in large part to the extremely stressful situation the prisoner finds himself

³⁶⁶ Referring to the story mentioned in *Sūrah al-Burūj*. The story is recorded by ibn Kathīr via Aḥmad in his *Tafsīr* (10/427-431), and Muslim's (3005) version is recorded will follow - by the permission of Allāh (pp.674-679)

³⁶⁷ Shaykh Muḥammad ibn ‘Abd ar-Raḥmān ibn Qāsim رَحِمَهُ اللهُ commented in the footnotes of the Shaykh's *Fatwā*, explaining Shaykh Muḥammad ibn Ibrāhīm's words, “If it is feared that the ship will sink and everyone will drown, it is permissible to throw some people overboard. Evidence for this is in the story of Yūnus عَلَيْهِ السَّلَام, and that was when the ship was tossed around by waves from every side and they were on the verge of (sinking, and thus) drowning. Therefore, they drew lots to determine whom to throw overboard in order to lighten the boat. The lot fell on Yūnus, the Prophet of Allāh عَلَيْهِ السَّلَام, three times, and they thought that (by casting lots) the person would be from amongst them (and not Yūnus عَلَيْهِ السَّلَام)...”

³⁶⁸ *Fatāwā ash-Shaykh Muḥammad ibn Ibrāhīm: Kitāb al-Jihād* (6/207&208) (1479)

³⁶⁹ i.e. *The Ruling Regarding Killing One's Self to Protect Information*, at-Tibyān Publications. Click to download from [Distance of a Month's Journey Media](#)

in, an unpresidented opportunity is presented to Satan - may Allāh curse him - to corrupt the intention of the believer. This is especially true during the initial stages of detention, interrogation, and torture, wherein the rapid change of circumstance and ‘shock to the system’ of the detainee will likely result in feelings of sorrow, hopelessness, and desperation.

In such a situation, the believer must be acutely aware of his true intentions and the doubts Satan will be casting into his mind seeking to alter the believer’s perception of reality. Thus, the question needs to be asked as to whether ones actions are designed to safegaurd Islām and the believers from their enemies, thereby sincerely seeking none other than Allāh’s pleasure. Or on the other hand, are they instead an attempt to hasten Allāh’s Decree and rescue oneself from the trials of torture and/or lengthy detention?

One, it is hoped, will result in the believer being among those mentioned by the Exalted:

﴿وَمِنَ النَّاسِ مَن يَشْرِى نَفْسَهُ ابْتِغَاءَ مَرْضَاتِ اللَّهِ
وَاللَّهُ رَءُوفٌ بِالْعِبَادِ﴾³⁷⁰

And of the people is he who sells himself, seeking means to the approval of Allāh. And Allāh is kind to [His] servants.³⁷⁰

While the other, it is feared, may be amongst those about whom Allāh said:

قَدْ حَرَّمْتُ عَلَيْهِ الْجَنَّةَ

“I have indeed forbidden his entry into Paradise.”³⁷¹

³⁷⁰ Sūrah al-Baqarah (2):207

Accordingly - may Allāh ﷻ protect the believers from the trails of imprisonment - let everyone be aware lest the accursed Satan misleads one into Allāh's Anger after having originally embarked upon the path towards His Pleasure.

حكم المرأة إذا تعرضت للفاحشة

THE FEMALE PRISONER WHO IS FORCED TO COMMIT FORNICATION ³⁷²

Closely related to the previous topic, is that of the woman who expects that if she is captured by the enemy, her captors will overpower (i.e. rape her) or coerce her into acts violating her chastity.

Imām an-Nawawī رحمه الله, in *Rawḍah at-Ṭālibīn* (1/215), states, “If a woman knows that if she surrenders herself, the hands (of the enemy) will extended towards her (i.e. she will be molested). It is obligatory upon her to resist even if it will lead to her being killed; due to the impermissibility of the one compelled to commit fornication (*Zinā*) submitting in order to save their life.” *Imām ibn an-Nuḥḥās* رحمه الله also reiterates the same ruling in *Mashāri’ al-Ashwāq*.

Ibn Taymiyyah رحمه الله also says, speaking about the *Ṣā’il* (assailant) in *as-Siyāsah ash-Shar’iyyah* (pgs.250&251), “... It is not permissible to allow (the assailant to perpetrate acts violating chastity) under any circumstances.” *Shaykh ibn al-‘Uthaymīn*

³⁷¹ *Ṣaḥīḥ Muslim: The Book of Faith* (113). The full narration has preceded on p.293

³⁷² This chapter is equally as applicable to the Muslim man as it is to the Muslim women, due to the now widespread use of sexual, and homosexual violence as a form of abuse carried out by the enemies of Allāh - and may His curse engulf them

رحمہ اللہ comments on ibn Taymiyyah's words, saying, "It is not allowed for the women to (submit) in order to save herself, or for the boy in order to save himself. Rather, it is *Wājib* to defend oneself."

Al-Khaṭīb ash-Sharbīnī رحمہ اللہ in *Mughnī al-Muḥtāj* (6/23) states, "If a woman knows that she will be sexually assaulted, then it is upon her to defend herself even if it leads to her being killed, as (sexual) indecency (*al-Fāḥishah*) does not become permissible due to fear of being killed. However, if the enemy does not approach her sexually initially, but she thinks that it is a possibility they may do after her capture, then it is permissible to for her to surrender herself, and then defend herself if they afterwards approach her."

Although, it is certainly not recommended for the *Muslimah* (i.e. Muslim women) to surrender herself on this premise, especially if she finds herself either:

- Facing capture during war, or
- Facing capture at the hands of people known for their practice of sexual violence, such as the vast majority, if not all, of the Arab regimes, the Shiites, Serbs, Budhists (of Burma), Hindus (of India), or any others like them

As imprisoned and unarmed, she is at a severe disadvantage and at serious risk of being overpowered and raped. While in such a situation, (i.e. if she is physically overpowered despite trying her best to defend herself) she may not be sinful in the eyes of The Most Merciful.³⁷³ Nevertheless, the reality is that she will have

³⁷³ Firstly, like the crime of murdering a believer, this only applies to the woman (or man) who is physically overpowered despite their best efforts to fight off their aggressors, and not those who make the descision, despite being coerced, to submit to their aggressors in order to ward of another evil such as death, imprisonment, or torture. While such a situation may make other sins permissible, it does not make the sin of fornication permissible for the believer. Secondly those who, on account of genuine compulsion (*Ikrah*), are

been raped and will carry that stigma for the rest of her life, especially if it results in a child, being ostracised by - except for those Allāh has mercy upon - her own family, along with all those who were close to her, a fact known and played upon by the enemies of Allāh ﷻ. ³⁷⁴

Additionally it is known that, in general, most Western European countries do not rape their domestic detainees.³⁷⁵ However, they do subject them to enforced strip and sometimes cavity searches, violating the honour and sanctity of the Muslim woman. It is also common for them to publicise images of Muslim women without their Islamic clothing (veils, hijabs, and the like) after their detention; a fact that the believing woman would do well to consider before surrendering herself to the disbelieving authorities. Therefore, the Muslim is not permitted to surrender to such a fate and then claim to be free from blame due to their being compelled to perform such acts. As resisting the disbelievers is *Jihād* and death is indeed a must for every soul, and the best death is the one sustained whilst seeking Allāh's pleasure, as mentioned by the Prophet ﷺ: ³⁷⁶

forced to commit sin and are considered free from blame, do not include those who knowingly and willingly subject themselves such situations. Such as those who willingly return to their homelands from the lands of *Jihād*, knowing they will be subject to interrogation and detention upon arrival. But then claim the excuse of compulsion for their making statements of disbelief, revealing information harmful to the *Mujāhidīn* and their families, and similar crimes; all the while knowing this would be the likely outcome of their actions. Such people are indeed blameworthy, and Allāh ﷻ indeed knows best

³⁷⁴ This is indeed a serious disease the Muslim *Ummah* has within many of her communities (i.e. that of disowning the victims of sexual abuse), the address of which being long overdue. However, unfortunately it is outside the scope of this work - and we seek Allāh's forgiveness for our shortcomings

³⁷⁵ However, in a state of warfare, and especially in the lands of the Muslims, most have been documented as engaging in such practices, or at least permitting, and even encouraging their local allies to do so on their behalf - and Allāh's refuge is sought from their evil

³⁷⁶ This is mentioned to highlight a perspective that many Muslims have unfortunately forgotten; that of the Prophet ﷺ mobilising the entire Muslim army due to one Muslim women being partially uncovered by a Jew in one of

مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ
دُونَ دِينِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ

“Whoever is killed protecting his wealth is a *Shahīd* (i.e. martyr), whoever is killed protecting his family is a *Shahīd*, whoever is killed protecting his religion is a *Shahīd*, and whoever is killed protecting himself is a *Shahīd*.”³⁷⁷

دفع الرشوة لإخراج أسير من السجن FREEING THE MUSLIM POWS BY BRIBING THE DISBELIVERS

As has previously been mentioned, freeing the Muslim POW whether by physically breaking them out of captivity or by other means, is an obligation upon the *Ummah*.

Ordinarily, the act of bribery is *Harām* - both for the one giving, and the one receiving the bribe. This due to the words of Allāh ﷻ in *Sūrah al-Baqarah* (2:188):

﴿وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى
الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ
تَعْلَمُونَ﴾

their market places in Madīnah, due to her refusing to reveal her face to him. Refer to the battle of Banū Qaynuqā' in the works on *Sīrah* for an account of this incident

³⁷⁷ *Musnad Ahmad: Musnad Sa'īd ibn Zayd ibn 'Amr ibn Nufayl* (1653), *Sunan Abī Dāwūd: The Book of the Sunnah* (4722), and *Jāmi' at-Tirmidhī: The Chapters on Blood Money* (1421), and *Sunan an-Nasā'ī: The Book on the Prohibition of Bloodshed* (4094)

And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].

He ﷺ also says in *Sūrah al-Mā'dah* (5:62):

﴿وَتَرَىٰ كَثِيرًا مِّنْهُمْ يُسْدِرُونَ فِي الْأَثَرِ وَالْعُدُونِ وَأَكْلِهِمُ السُّحْتَ
لَيْسَ مَا كَانُوا يَعْمَلُونَ﴾³⁷⁸

And you see many of them hastening into sin and aggression and the devouring of [what is] unlawful [i.e., bribery]. How wretched is what they have been doing.

While in a *Hadīth* reported in *Sunan Abī Dāwūd: The Book of Judgements* (3580), ‘Abdullāh ibn ‘Amr رضي الله عنه narrated:

لَعَنَ رَسُولُ اللَّهِ ﷺ الرَّاشِيَّ وَالْمُرْتَشِيَّ

“The Messenger of Allāh ﷺ cursed the one who gives bribes and the one who receives them.”³⁷⁸

However in this scenario, the form the bribery usually takes is the paying of a bribe to a soldier, police, security, prison, or governmental official to ‘help’ the prisoner(s) in question escape custody. The ‘help’ can take many forms; from physically smuggling the prisoner out of prison, allowing the prisoner to escape whilst ‘looking the other way’, or providing information that would assist the prisoner or others to break him/her out of prison, during transit, or during court proceedings and the like.

³⁷⁸ Also reported in *Sunan ibn Mājah: The Book of Judgements* (2313), *Jāmi’ at-Tirmidhī: The Chapters on the Judgements of the Messenger of Allāh ﷺ* (1337), and *Musnad Aḥmad* (6532, 6778, 6779, 6830, 6984)

As such, the scholars considered the believer who resorts to bribery as a last recourse, permitted to use this act in order to realise the order of the Prophet ﷺ reported by Abū Mūsā رَضِيَ اللَّهُ عَنْهُ in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (3046):

فُكُّوا الْعَانِي

“Free the prisoner.”

As-Suyūṭī رَحِمَهُ اللَّهُ says in *al-Ashbā' wa'n-Nadhā'ir* (p.150), “That which is *Ḥarām* to take is *Ḥarām* to give, such as *Ribā* (interest), the price of a prostitute, the fortuneteller’s tip, bribery, and the wage of the (hired) mourner³⁷⁹ and musician. Exceptions to this include the bribe paid to the ruler in order to obtain ones right(s), freeing the POW and that which is given to the one whose slander is feared (i.e. the poet or orator).”

As-Subkī رَحِمَهُ اللَّهُ says in his *Fatāwā* (1/204), “What is intended by ‘bribery’ in what we have mentioned, is that which is given in order to avert the truth or bring about *Bāṭil* (falsehood). [...] As for the one who is unable to obtain his right except by it (i.e. resorting to bribery), it is permissible. However, if he is able to obtain his right through other (permissible) means it is not permissible.”

In *Baḥr ar-Rā'iq* (6/285) ibn Najīm رَحِمَهُ اللَّهُ states, “If (the Muslim) uses bribery due to a fear for himself or his wealth, then it is *Ḥarām* upon the one taking the bribe, but not upon the one giving it.”

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللَّهُ says in *Majmū' al-Fatāwā* (31/286), “Thus, if he gives a ‘gift’ to someone in order to ward off his oppression upon him, or so that he affords him his

³⁷⁹ They are people that take a wage to attend funerals to wail for the deceased. This is done to exaggerate the status of the deceased, giving the impression that their loss is a severe blow to those left behind

legitimate right that he is required to give. This 'gift' is *Harām* upon the one taking it, and permissible for the one giving it, as the Prophet ﷺ said:

«فَإِنَّ أَحَدَكُمْ لَيَخْرُجُ بِصَدَقَةٍ مِنْ عِنْدِي مُتَابِطُهَا وَإِنَّمَا هِيَ لَهُ نَارٌ»
 فَقُلْتُ: يَا رَسُولَ اللَّهِ كَيْفَ تُعْطِيهِ وَقَدْ عَلِمْتَ أَنَّهُ لَهُ نَارٌ؟ قَالَ: «فَمَا أَصْنَعُ؟ يَأْبُونَ إِلَّا أَنْ يَسْأَلُونِي وَيَأْتِيَ اللَّهُ لِي الْبُخْلُ»

'I give charity to one of you and he will depart carrying (it) under his arm, but it is nothing but fire for him.' So I (i.e. 'Umar ibn al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ) said, 'O Messenger of Allāh, how do you give them while you know it will be a source of punishment for them?' He replied, *'So what should I do? They refuse to desist from asking me, and Allāh has refused to allow me to be miserly.'*³⁸⁰

And from the likes of this, is giving it in order to free a slave, or to the one who has enslaved a free man, or to the oppressor. Thus, giving (bribes) to these people is permissible for the one giving, but *Harām* for the one receiving (the bribe)."

To conclude, bribery in its essence is *Harām*, however if the believer(s) are unable, utilising permissible means, such as though fighting, swapping captives, and their like, to fulfil the obligation of freeing the Muslim POWs. Then it becomes permissible as this falls into the realms of necessity, permitting the usually impermissible. Likewise, in the absence of (originally) permissible means, the believers are faced with the option of leaving the believers languishing in the captivity of the disbelievers - an enormous evil and major calamity, and the option of bribing the disbelievers to secure the believers' release, which is undoubtedly the lesser of the two evils. Thus, according to the *Fiqhī* principle, 'In the event one of two evils is

³⁸⁰ *Al-Mustadrak* (144), *Musnad ibn Abī Ya'āl al-Mūṣulī* (1327), and *Musnad Aḥmad* (10739, 11123). Al-Arna'ūt said its *Isnād* is *Ṣaḥīḥ*

unavoidable, the lesser of the two must be chosen,' it becomes obligatory to secure the freedom of the believers in this manner, and Allāh ﷻ knows best.

متفرقات في الأسير المسلم

MISCELLANEOUS ISSUES REGARDING THE MUSLIM POW

Muḥammad ibn Rushd رَحِمَهُ اللهُ says in *al-Bayān wa't-Taḥṣīl* (2/560), "... If the *Imām* and the Muslims neglect their obligation with regards to (freeing the POWs), then it becomes *Wājib* (obligatory) upon every prisoner possessing wealth to spend it in order to free himself. It is not permissible upon him to remain captive in the territory of the disbelievers whilst holding on to his wealth (i.e. whilst being capable of using it to free himself), and this is apparent from the statement of Mālik."

Ibn Nuḥḥās رَحِمَهُ اللهُ states in *Mashāri' al-Ashwāq* (p.1053), "If a Muslim POW is able to escape then it is *Wājib* upon him to do so. If he can escape and capture any enemy, take any of their property, or kill amongst them then he should [...]."

If the prisoner of war is released with conditions that he agrees to then he must fulfil those conditions in order not to end up harming other Muslim POWs or causing the enemy to think that the Muslims are untrustworthy."

He also says (pgs.1065&1066), "The Muslim POW is not allowed to marry a disbelieving woman in the land of disbelief, as the children in this case might follow their mother's religion [...]. And he is not allowed to marry a Muslim because they

could force them and their children to apostate, or they in turn could be enslaved.”³⁸¹

In reference to the last paragraph of ibn an-Nuḥḥās's رَحْمَةُ اللَّهِ words; this has unfortunately been witnessed and happens frequently in the West. Additionally, as is known by most that have encountered detention or imprisonment, one of the most difficult aspects is the separation between man and his wife and offspring. If this is coupled with the fact that, as Allāh ﷻ says in *Sūrah al-Baqarah* (2:217):

﴿وَلَا يَزَالُونَ يَقْتُلُونَكُمْ حَتَّى يَرُدُّوكُمْ عَنْ دِينِكُمْ إِنِ اسْتَطَعُوا
وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِ فَيَمُتْ وَهُوَ كَافِرٌ فَأُولَٰئِكَ
حَبِطَتْ أَعْمَالُهُمْ فِي الدُّنْيَا وَالْآخِرَةِ وَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ
فِيهَا خَالِدُونَ﴾

And they will continue to fight you until they turn you back from your religion if they are able. And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire; they will abide therein eternally.

Then the responsible believer would not voluntarily provide his enemies with such leverage. Leverage they will not hesitate in using to achieve their aims against him. Consequently, the issue should not be taken lightly, and Allāh ﷻ is certainly the best Disposer of affairs.

³⁸¹ Also in the English abridgement (p.381)

CHAPTER SUMMARY

The Muslim by default, is not permitted to allow him/herself to be captured by the disbelievers if the possibility of escape or resistance exists.

It is *Wājib* (obligatory) to free the Muslim POW using any permissible means at the disposal of the believers. This includes the normally prohibited act of giving bribes, as in such cases the sin falls upon the one accepting the bribe and not the one offering it.

The obligation to free the POW falls upon the Muslims as a community, and upon their individuals according to their capability. The prisoner him or herself is not exempted from this obligation despite their imprisonment, and is thus required to ransom him or herself, or escape if the opportunity exists.

It is not allowed under any circumstances for the Muslim prisoner to submit to sexual assault, even if this leads to death.

The Muslim prisoner is prohibited from committing suicide fearing the trials of imprisonment and torture at the hands of the enemy.

Although, in the case of the prisoner fearing that they will be compelled to disclose critical information, the act of taking their own life may become permissible if the following conditions are met:

- 1) His intention should be solely for the sake of Allāh; and by undertaking this act he is protecting the Muslims and their sanctities.

- 2) The information that he carries is of the nature, that the consequences of it falling into the hands of the disbelievers would be severe upon the Muslims.
- 3) He is sure that he will not be able to remain patient when confronted with torture. However, if he is able to withstand the torture and remain patient, suicide in such an instance is *Ḥarām*.
- 4) He has actually fallen into the hands of the enemies or there is little doubt that he is about to, as opposed to the mere existence of this possibility.

CHAPTER 19

حكم الأمان

RULINGS REGARDING COVENANTS OF SECURITY

Covenants of security were practised between individuals, tribes, and states, before and after the advent of Islām (i.e. the Prophethood of Muḥammad ﷺ). Both the Prophet ﷺ and Abū Bakr رَضِيَ اللَّهُ عَنْهُ were recipients of covenants of security whilst they resided in Makkah before the migration of the believers to al-Madīnah.

In *Zād al-Ma'ād* (1/218&219), ibn Qayyim رَحِمَهُ اللَّهُ wrote, “After the Prophet ﷺ left at-Ṭā'if after its people refused to help, and believe believe in him he went to Hira. From there he ﷺ sent for al-Akhnas ibn Sharīq, asking that he grant him protection. Al-Akhnas replied, ‘I am an ally (of the Quraysh, and not one of its core members), and an ally cannot grant protection.’ The Prophet ﷺ then sent for Suhayl ibn ‘Amr (with the same request). Suhayl answered, ‘Verily, Banū ‘Āmir (of which he was a member) cannot grant protection over Banū Ka'b.’ Next, the Prophet sent for Muṭ'im ibn ‘Adī, chief of the Banū Nawfal ibn

‘Abd al-Manāf tribe (i.e. sub-tribe). To him, the Prophet ﷺ sent a messenger, a man from the Khuzā’ah, with the message, ‘*Shall I enter your protection?*’ Muṭ’im replied, ‘Yes,’ after which he summoned his children and his people. He said to them, ‘Attire yourselves in armour and station yourselves around the corners of the House (i.e. the *Ka’bah*), for indeed, I have granted protection to Muḥammad.’ The Messenger of Allāh ﷺ and Zayd ibn Hārithah رَضِيَ اللَّهُ عَنْهُ entered (Makkah) and headed straight for the *Masjid al-Ḥarām*. (There in front of the *Ka’bah*) Muṭ’im ibn ‘Adī sat up straight on his mount and called out, ‘O people of Quraysh, I have indeed granted my protection to Muḥammad, so let none among you make any move to harm him.’ The Messenger of Allāh went to ar-Rukn (one of the corners of the *Ka’bah*) and embraced it. He ﷺ prayed two *Rak’ah*, and then returned to his house. Throughout (those tense minutes or hours), Muṭ’im ibn ‘Adī and his children surrounded him, with their weapons (in hand), until he entered his house.”³⁸²

The Prophet ﷺ would remark years later, after the battle of Badr, expressing his gratitude:

لَوْ كَانَ الْمُطْعِمُ بْنُ عَدِيٍّ حَيًّا، ثُمَّ كَلَّمَنِي فِي هَؤُلَاءِ النَّتَنِ، لَتَرَكْتُهُمْ لَهُ

“Had Muṭ’im ibn ‘Adī been alive and spoken to me (i.e. interceded to me) concerning these foul ones, I would have indeed left them for him (i.e. without taking any ransom for the release of the prisoners of Badr).”³⁸³

Similarly, Abū Bakr رَضِيَ اللَّهُ عَنْهُ was granted protection to enter Makkah by ibn ad-Daghinah, after he had resolved to migrate to the land of Abyssinia; a covenant Abū Bakr would later return after being asked to curtail his *Da’wah* efforts. He said to ibn ad-Daghinah, “I return to you your guarantee of safety, and I am

³⁸² Refer to the *Noble Life of the Prophet ﷺ* (1/520-535)

³⁸³ *Ṣaḥīḥ al-Bukhārī: The Book of the Battles of the Messenger of Allāh* (4024)

satisfied and pleased with Allāh's protection - the Possessor of Might and Majesty.”³⁸⁴

The Muslims of Makkah who emigrated to Abyssinia were also given a covenant of safety from the ruler there - an-Najāshī (Negus), that they could remain in his lands for as long as they wished without being subjected to any harm.³⁸⁵

All covenants between the Muslim and disbelievers, if valid, are sacred and must be honoured by the Muslims for their duration, or until their violation by their disbelieving signatories. As such, the Prophet ﷺ said regarding the one who breaches the covenant or treaty:

مَنْ قَتَلَ مُعَاهِدًا فِي غَيْرِ كُنْهٍ حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ

“If any one kills a Mu'āhid without justification, Allāh has forbidden his entry into paradise.”³⁸⁶

The Prophet ﷺ also informed the believers that such betrayal is a trait of *Nifāq* (hypocrisy), evident in the narration collected in *Ṣaḥīḥ Muslim: The Book of Faith* (55) wherein he ﷺ said:

أَرْبَعٌ مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا، وَمَنْ كَانَتْ فِيهِ خَلَّةٌ مِنْهُمْ كَانَتْ فِيهِ خَلَّةٌ مِنْ نِفَاقٍ حَتَّى يَدْعَهَا: إِذَا حَدَّثَ كَذَبَ، وَإِذَا عَاهَدَ غَدَرَ، وَإِذَا

³⁸⁴ *Fath al-Bārī* (7/233). Refer to *Ṣaḥīḥ al-Bukhārī: The Book of Kafālah* (2297), *al-Bidāyah wa'n-Nihāyah* (2/358&359), ibn Kathīr's *The Life of the Prophet Muḥammad* (2/41-43) and *The Biography of Abu Bakr as-Siddeeq* رَضِيَ اللَّهُ عَنْهُ (pp.71-77) for an account of this incident

³⁸⁵ Refer to the books of *Sīrah* for an account of this well-known incident

³⁸⁶ *Sunan an-Nasā'ī: The Book of Oaths and Vows* (4747)

The *Mu'āhid* (المعاهد) is the disbeliever given a covenant, referred to as an '*Ahd* (العهد) in Arabic. Such disbelievers are safeguarded in relation to their blood, wealth, and honour by the terms of their covenants until either; the term of the covenant elapses, or they willingly violate its terms

وَعَدَ أَخْلَفَ، وَإِذَا خَاصَمَ فَجَرَ غَيْرَ أَنَّ فِي حَدِيثِ سُفْيَانَ: «وَإِنْ كَانَتْ فِيهِ خَصْلَةٌ مِنْهُمْ كَانَتْ فِيهِ خَصْلَةٌ مِنَ النِّفَاقِ»

“There are four characteristics, whoever has all of them is a pure *Munāfiq* (hypocrite), and whoever has one of them, has one of the characteristics of hypocrisy until he abandons it: When he speaks he lies, when he makes a covenant he betrays it, when he makes a promise he breaks it, and when he disputes he resorts to obscene speech.”³⁸⁷

For their duration, as mentioned by Shaykh ibn al-‘Uthaymīn رَحِمَهُ اللهُ، these covenants protect the ordinarily permissible blood, wealth, and honour of their disbelieving signatories. He stated in *Fatāwā Nūr ‘alā’ d-Darb* (8/400), “As for the disbelievers that lack a treaty, a covenant of security, or a contract of *Dhimmah* between us and them, they are *Harbiyīn* and are not inviolable (i.e. safeguarded). Consequently, their wealth, blood, offspring, and women are all *Halāl* for the Muslims (to plunder), and due to this they have declared war against us, and we have (similarly) declared war against them.”

There are four types of covenants of security (*Amān*) permissible for the believers to enter into with the disbelievers. They are:

1) Contract of *Dhimmah*

For those eligible, this type of contract permits them to reside, with the exception of the Arabian Peninsula,³⁸⁸ in *Dār al-Islām*

³⁸⁷ Similar narrations are also found in *Ṣaḥīḥ al-Bukhārī: The Book of Belief* (34), and in *Sunan Abī Dāwūd: The Book of Model Behaviour of the Prophet* (4688)

³⁸⁸ This is due to the Prophet ﷺ commanding the believers, in a narration recorded in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (3053):

أَخْرِجُوا الْمُشْرِكِينَ مِنْ جَزِيرَةِ الْعَرَبِ

“Expell the polythiists from the Arabian Peninsula.”

on the condition that they pay the *Jizyah* willingly in a state of humiliation.³⁸⁹ This is in exchange for protection from all forms of oppression and aggression, exemption from military service, and being permitted to remain upon their misguided religions in the lands of the Muslims.

The *Imām* or one of his representatives, such as the commander of the Islamic forces, may conduct this type of covenant for individual disbelievers and entire regions.

The evidence for its permissibility is in *Sūrah at-Tawbah* (9:29) wherein Allāh ﷻ says:

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾ (٢٩)

He ﷻ likewise said in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1767):

لَأُخْرِجَنَّ الْيَهُودَ وَالنَّصَارَى مِنْ جَزِيرَةِ الْعَرَبِ حَتَّى لَا أَدَعَ فِيهَا إِلَّا مُسْلِمًا

“I will indeed expel the Jews and Christians from the Arabian Peninsula; until there is none left within it save a Muslim.”

Also Aḥmad رحمه الله reported in his *Musnad* (26352) from ‘Ā’ishah رضي الله عنها:

آخِرُ مَا عَهَدَ رَسُولُ اللَّهِ ﷺ: لَا يَتْرُكُ بِجَزِيرَةِ الْعَرَبِ دِينَانِ

“The last command the Messenger of Allāh ﷺ issued was: ‘Do not leave two religions in the Arabian Peninsula.’”

For more details regarding this ‘forgotten’ obligation, refer to ibn Qayyim’s *Aḥkām Ahl adh-Dhimmah* and likewise ad-Dimyāṭī’s work by the same title

³⁸⁹ The word *Jizyah* is from the root word *Jazā’* (الجزاء), which means to recompense. Thus, paying the *Jizyah* in a state of humiliation is a condition for the validity of their treaty, and a just recompense for their insistence to remain upon disbelief despite having the freedom under Islamic rule to adopt the religion of truth without fear of oppression or persecution, and after having witnessed its merits and truthfulness firsthand

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islām] from those who were given the Scripture - [fight] until they give the Jizyah willingly while they are humiliated.

2) 'Ahd or *Ṣulḥ*

This is when the leader of the Muslims conducts a peace treaty with his counterpart from the disbelievers. They agree to a ceasesation of hostilities for a specified period of time, during which no side should transgress against the other. An example of this from the era of the Prophet ﷺ was the Treaty, or *Ṣulḥ* of Ḥudaybiyyah, which took place between the Prophet ﷺ and the leaders of Quraysh in the seventh year *Hijrī*, wherein they agreed to halt hostilities for a ten year period.

Nevertheless, there were a number of scholars from the *Salaf*, such as 'Ikrimah and Qatādah رَحِمَهُمَا اللَّهُ, who considered that the revelation of *Sūrah at-Tawbah*³⁹⁰ abrogated this practice. Ibn 'Abbās رَضِيَ اللَّهُ عَنْهُ similarly considered it abrogated, however he deemed it abrogated by the verse in *Sūrah Muḥammad* (47:35) wherein Allāh ﷻ says:

﴿فَلَا تَهِنُوا وَتَدْعُوا إِلَى السَّلَامِ وَأَنْتُمْ الْأَعْلَوْنَ﴾

So do not weaken and call for peace

A such, the disbelievers are left, according to this opinion, with three choices: Embrace Islām, pay the *Jizyah*, or be fought.³⁹¹

³⁹⁰ In particular, the verses (9:5) and (9:36)

³⁹¹ Refer to *Tafsīr al-Qurṭubī* (4/398) in his commentary on *Sūrah al-Anfāl* (8:61)

3) The Security of *Jiwār*

This type of covenant of security may be issued by any eligible Muslim, and can be given to any individual disbeliever or small group, guaranteeing their safety in *Dār al-Islām* for the purposes of them learning about Islām. Once they have heard about the teachings of Islām, they either embrace Islām and remain with their new found brothers, or are escorted out of *Dār al-Islām* and returned promptly to their place of safety (i.e. a place in which they are not in need of security from the Muslims, such as a border or port).

Allāh ﷻ mentions this type of covenant in *Sūrah at-Tawbah* (9:6) saying:

﴿وَإِنْ أَحَدٌ مِنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّى يَسْمَعَ كَلَامَ
اللَّهِ ثُمَّ أَبْلِغْهُ مَأْمَنَهُ ذَلِكَ بِأَنَّهُمْ قَوْمٌ لَا يَعْلَمُونَ﴾

And if any one of the polytheists seeks your protection, then grant him protection so that he may hear the words of Allāh [i.e., the Qur'ān]. Then deliver him to his place of safety. That is because they are a people who do not know.

4) *Amān*: Covenant of Security

This type of covenant is customarily, although not exclusively, given to messengers and envoys from the disbelievers, their businessmen when they travel to *Dār al-Islām*, and other such professionals who possess a benefit for the Muslims. Once they have conducted whatever business they came for, they are, like those enjoying a covenant of *Jiwār*, returned promptly to their place of safety. Regarding this type of covenant, Abū Dāwūd رحمه الله in his *Sunan: The Book of Jihād* (2761) narrates from

Salamah ibn Nu'aym ibn Mas'ūd al-Ashja'ī, who narrates from his father Nu'aym رضي الله عنه who said:

عَنْ سَلَمَةَ بْنِ نُعَيْمٍ بْنِ مَسْعُودٍ الْأَشْجَعِيِّ عَنْ أَبِيهِ نُعَيْمٍ، قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ لَهُمَا حِينَ قَرَأَ كِتَابَ مُسَيْلِمَةَ: "مَا تَقُولَانِ أَنْتُمَا؟" قَالَا: نَقُولُ كَمَا قَالَ، قَالَ: "أَمَّا وَاللَّهِ لَوْلَا أَنَّ الرُّسُلَ لَا تُقْتَلُ لَضَرَبْتُ أَعْنَاقَكُمَا"

"I heard the Messenger of Allāh ﷺ saying to the two (messengers) when he read Musaylimah's letter, 'What do you two say?' They said, 'We say as he says (i.e. Musaylimah).' He ﷺ then said, 'By Allāh, if it was not that messengers are not killed, I would have certainly executed you both.'"

This chapter will concentrate on this forth type of treaty - by the permission of Allāh ﷻ.

تعريف أمان

DEFINITION OF THE COVENANT OF SECURITY

According to the *Sharī'ah*, the Covenant of Security is an expression denoting the safety of a disbeliever with regards to his blood, wealth, and women and children for a specified period.

Its basis is found in the words of Allāh in *Sūrah at-Tawbah* (9:6):

﴿وَإِنْ أَحَدٌ مِنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّى يَسْمَعَ كَلَامَ اللَّهِ ثُمَّ أَبْلِغْهُ مَأْمَنَهُ ذَلِكَ بِأَنَّهُمْ قَوْمٌ لَا يَعْلَمُونَ﴾

And if any one of the polytheists seeks your protection, then grant him protection so that he may

hear the words of Allāh [i.e., the Qur'ān]. Then deliver him to his place of safety. That is because they are a people who do not know.

In *Sūrah an-Nahl* (16:91):

﴿وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْقُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا إِنَّ اللَّهَ يَعْلَمُ مَا تَفْعَلُونَ ﴿٩١﴾﴾

And fulfil the covenant of Allāh when you have taken it, [O believers], and do not break oaths after their confirmation while you have made Allāh, over you, a security [i.e., witness]. Indeed, Allāh knows what you do.

In *Sūrah al-Anfāl* (8:27):

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمْنَتَكُمْ وَأَنْتُمْ تَعْلَمُونَ ﴿٢٧﴾﴾

O you who have believed, do not betray Allāh and the Messenger or betray your trusts while you know [the consequence].

And likewise (8:58):

﴿وَأَمَّا تَخَافَنَّ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَى سَوَاءٍ إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ ﴿٥٨﴾﴾

If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms. Indeed, Allāh does not like traitors.

In the *Sunnah*, Muslim رَحِمَهُ اللهُ records in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (1738) that Abū Sa'īd رَضِيَ اللهُ عَنْهُ narrates that the Messenger of Allāh ﷺ said:

لِكُلِّ غَادِرٍ لَوَاءٌ عِنْدَ اسْتِهِ يَوْمَ الْقِيَامَةِ

“On the Day of Judgement there will be a flag fixed behind the buttocks of every person guilty of a breach of faith.”

In *Ṣaḥīḥ al-Bukhārī: The Book of Jizyah and Muwāda'ah* (3166), ‘Abdullāh ibn ‘Amr رَضِيَ اللهُ عَنْهُ narrates that the Prophet ﷺ said:

مَنْ قَتَلَ مُعَاهِدًا لَمْ يَرِحْ رَائِحَةَ الْجَنَّةِ، وَإِنْ رِيحَهَا تُوْجِدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَامًا

“Whoever killed a person having a treaty with the Muslims, shall not smell the scent of Paradise even though its smell can be smelt from a distance of forty years.”

And in *Sunan Abī Dāwūd: The Book of Jihād* (2760), Abū Bakrah رَضِيَ اللهُ عَنْهُ narrates that the Prophet ﷺ said:

مَنْ قَتَلَ مُعَاهِدًا فِي غَيْرِ كُنْهِهِ حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ

“If anyone prematurely kills a man whom he granted protection, Allāh will forbid him from entering Paradise.”³⁹²

Meaning that whoever kills the recipient of a covenant or treaty without due justification, such as punishing him for a crime that carries the death penalty, or due to his breaking the terms of the treaty, is blameworthy according to the narration. Another

³⁹² Also in *Sunan an-Nasā'ī: The book of Oaths, Retaliation, and Blood Money* (4747), and *Musnad Aḥmad* (20393). Al-Albānī رَضِيَ اللهُ عَنْهُ declared it *Ṣaḥīḥ* in his *Ṣaḥīḥ wa Ḍa'īf Abī Dāwūd* (2762)

interpretation understood by the Companions رَضِيَ اللَّهُ عَنْهُمْ is evident in the following narration reported by Abū Dāwūd رَحِمَهُ اللَّهُ in his *Sunan: The Book of Jihād* (2759), wherein Sulaym ibn ‘Amir, a man from Ḥimyar, said:

كَانَ بَيْنَ مُعَاوِيَةَ وَبَيْنَ الرُّومِ عَهْدٌ وَكَانَ يَسِيرُ نَحْوَ بِلَادِهِمْ حَتَّى إِذَا انْقَضَى الْعَهْدُ غَزَاهُمْ، فَجَاءَ رَجُلٌ عَلَى فَرَسٍ أَوْ بِرْذَوْنٍ وَهُوَ يَقُولُ: اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ وَفَاءٌ لَا غَدَرٍ، فَنَظَرُوا فَإِذَا عَمْرُو بْنُ عَبْسَةَ فَأَرْسَلَ إِلَيْهِ مُعَاوِيَةُ فَسَأَلَهُ، فَقَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ كَانَ بَيْنَهُ وَبَيْنَ قَوْمٍ عَهْدٌ فَلَا يَشُدُّ عُقْدَةً وَلَا يَحُلُّهَا حَتَّى يَنْقَضِيَ أَمْدُهَا أَوْ يَنْبَذَ إِلَيْهِمْ عَلَى سَوَاءٍ» فَرَجَعَ مُعَاوِيَةُ

“There was a covenant between Mu’āwiyah and the Byzantines, however he was heading towards them so that when the covenant expired he would (immediately) attack them. A man came riding a horse or packhorse exclaiming, ‘*Allāhu Akbar! Allāhu Akbar!*’ Let there be faithfulness and no treachery.’ When they looked they found it was ‘Amr ibn ‘Abasah. Mu’āwiyah sent for him and questioned him (about what he had said). He replied, ‘I heard the Messenger of Allāh ﷺ say, “When one has a covenant with a people, he must not strengthen it nor loosen it till its term comes to an end, or he brings it to an end in agreement with them.”’ Thereafter Mu’āwiyah returned (without attacking the Romans).”³⁹³

³⁹³ Also in *Jāmi’ at-Tirmidhī: The Book of Military Expeditions* (1580), *Musnad Aḥmad* (17056), and *al-Kubrā* by an-Nasā’ī (8732). Al-Albānī declared it *Ṣaḥīḥ* in his *Ṣaḥīḥ wa Ḍa’i’f Abī Dāwūd* (2759)

صفة من يصح منه عقد الأمان

THE CHARACTERISTICS OF THE ONE ENTITLED TO CONDUCT THE COVENANT OF SECURITY

Scholars have an *Ijmā'* (consensus) that the covenant of security granted by the free, adult, and sane Muslim is valid, and must be honoured by all Muslims.³⁹⁴

أمان المرأة

THE COVENANT OF SECURITY GIVEN BY THE WOMAN

The covenant of security given by the woman is regarded by the majority of scholars as occupying the same status as that of the man's pledge. Among those who held this were Abū Ḥanīfah, Mālik, ash-Shāfi'ī, Aḥmad, ath-Thawrī, al-Awzā'ī, Abū Thawr, and others رَحِمَهُمُ اللَّهُ. They based this on the narration recorded in both *Ṣaḥīḥ al-Bukhārī: The Book of Khumus* (3179) and *Ṣaḥīḥ Muslim: The Book of Pilgrimage* (1370), wherein 'Alī رَضِيَ اللَّهُ عَنْهُ narrated:

مَا كَتَبْنَا عَنِ النَّبِيِّ ﷺ إِلَّا الْقُرْآنَ وَمَا فِي هَذِهِ الصَّحِيفَةِ، قَالَ النَّبِيُّ ﷺ: «الْمَدِينَةُ حَرَامٌ مَا بَيْنَ عَائِرٍ إِلَى كَذَا، فَمَنْ أَحْدَثَ حَدَثًا أَوْ آوَى مُحَدِّثًا فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ، لَا يُقْبَلُ مِنْهُ عَدْلٌ وَلَا

³⁹⁴ Amongst those who have cited the *Ijmā'* on this ruling are ibn Mundhir in *al-Ijmā'* (p.64) and *al-Awṣat* (11/258), and Imām al-Azdī al-Qurṭubī in *al-Injād* (p.206). However, al-Ḥazmī considers this dependant on the leader permitting his followers to issue such covenants (*Masā'il al-Ijmā' fi'l-Jihād*, pgs.327&328)

صَرَفٌ، وَذِمَّةُ الْمُسْلِمِينَ وَاحِدَةٌ، يَسْعَى بِهَا أَذْنَاهُمْ، فَمَنْ أَخْفَرَ مُسْلِمًا،
فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ، لَا يُقْبَلُ مِنْهُ صَرَفٌ وَلَا
عَدْلٌ...»

“We did not write anything from the Prophet ﷺ except the Qur’ān and what is written on this paper, (wherein) the Prophet said, ‘*Madīnah is a sanctuary from the mountain of ‘Ā’ir to such and such place. Therefore whoever innovates in it a heresy, or gives shelter to an innovator will incur the curse of Allāh, the angels, and all of the people. None of his compulsory or voluntary good deeds will be accepted. The asylum (i.e. protection) granted by the Muslims is one, and is to be respected even if granted by the least Muslim; and whoever betrays a Muslim in this regard incurs the curse of Allāh, the angels, and all of mankind, and (on the Day of Resurrection) none of his compulsory or voluntary good deeds will be accepted...*’”³⁹⁵

In addition, al-Bukhārī رَحِمَهُ اللَّهُ records in his *Ṣaḥīḥ: The Book of Khumus* (3171) under the chapter heading: *The Offering of Shelter and Peace by a Woman*, that Umm Hānī رَضِيَ اللَّهُ عَنْهَا, the daughter of Abū Ṭālib narrated:

ذَهَبْتُ إِلَى رَسُولِ اللَّهِ ﷺ عَامَ الْفَتْحِ، فَوَجَدْتُهُ يَغْتَسِلُ وَفَاطِمَةُ ابْنَتُهُ
تَسْتُرُهُ، فَسَلَّمْتُ عَلَيْهِ، فَقَالَ: «مَنْ هَذِهِ؟»، فَقُلْتُ: أَنَا أُمُّ هَانِي بِنْتُ
أَبِي طَالِبٍ، فَقَالَ: «مَرْحَبًا بِأُمِّ هَانِي»، فَلَمَّا فَرَغَ مِنْ غُسْلِهِ، قَامَ فَصَلَّى
ثَمَانِي رَكَعَاتٍ مُلْتَحِفًا فِي ثَوْبٍ وَاحِدٍ، فَقُلْتُ: يَا رَسُولَ اللَّهِ زَعَمَ ابْنُ
أُمِّي عَلِيٌّ أَنَّهُ قَاتِلُ رَجُلٍ قَدْ أَجْرْتُهُ فَلَانُ بْنُ هُبَيْرَةَ، فَقَالَ رَسُولُ اللَّهِ
ﷺ: «قَدْ أَجَرْنَا مَنْ أَجَرْتَ يَا أُمُّ هَانِي»

³⁹⁵ Also in *Sunan Abī Dāwūd: The Book of the Rights of Hajj* (2034)

“I went to the Messenger of Allāh ﷺ on the day of the Conquest of Makkah and found him bathing whilst being screened by his daughter Fāṭimah. I greeted him and he asked, ‘Who is that?’ I replied, ‘I, Umm Hānī bint Abī Ṭālib.’ He said, ‘Welcome O Umm Hānī.’ When he finished bathing, he stood and offered eight *Rak’āt* while dressed in one garment. I said, ‘O Messenger of Allāh, the son of my mother ‘Alī has declared that he will kill a man to whom I have granted protection. The man is so-and-so ibn Hubayrah.’ The Messenger of Allāh ﷺ said, ‘O Umm Hānī, we will grant asylum to whomever you have granted protection to.’”³⁹⁶

Ibn al-Mundhir رحمه الله records in *al-Ijmā’* (p.64) that the majority of scholars have agreed that the covenant of security given by the free Muslim woman is legitimate (and is binding upon the rest of the Muslims).³⁹⁷

In *al-Injād* (p.207) ibn al-Munāṣif رحمه الله states, “The majority of the people of knowledge (agree) the covenant of security issued by the free women is permissible like that of the man’s. This was the opinion of Abī Ḥanīfah, ash-Shāfi’ī, and their companions, ath-Thawrī, al-Awzā’ī, Abī Thawr, ibn Ḥanbal (i.e. Aḥmad), Ishāq, Dāwūd, and others. While a group (differed,) holding that her covenant was dependant on the permission of the leader...”

³⁹⁶ Also in *Ṣaḥīḥ Muslim: The Book of Prayer* (336) and *al-Muwatta’: The Book of Shortening the Prayer when Travelling* (360)

³⁹⁷ Also, refer to *al-Awsaṭ* (11/261), *al-Ḥāwī al-Kabīr* (13/145), *al-Aḥkām as-Sulṭāniyyah* (p.165), *al-Mughnī* (9/241), (7478)

أمان الصبي

THE COVENANT OF SECURITY GIVEN BY THE CHILD

In *al-Awsat* (11/263), ibn al-Mundhir رحمه الله states, “Every one of the people of knowledge we take (knowledge) from have a consensus that the covenant of security given by the child is not valid. Sufyān ath-Thawrī, al-Awzā’ī, ash-Shāfi’ī, Aḥmad, Ishāq, and (the Ḥanafī’s) are amongst those I have preserved (this stance) from.”

In *al-Ijmā’* (p.64) he states, “There is a consensus on the impermissibility of the child’s covenant of security.”

However, some scholars make a distinction between the young child, the older child who, although not Islamically deemed an adult, possesses intelligence and is competent to discern between options, right and wrong, and that which is good and that which is better.

Accordingly, ibn Qudāmah رحمه الله explains in *al-Mughnī* (9/242), “As for the discerning child,³⁹⁸ ibn Ḥamīd states there are two opinions: The **first** is that the prohibition refers to the un-discerning (child), with the evidence for this being the generality of the *Ḥadīth* “... *The asylum (i.e. protection) granted by any Muslim is to be respected by every other Muslim...*” Thus, due to him being a discerning Muslim, his covenant is the same as the adult’s, unlike the pledge of the insane which no one considers...”³⁹⁹ He says in another place (9/242), “The security granted by the insane and the young child (*Tifl*)⁴⁰⁰ is not valid; as

³⁹⁸ The Arabic term is (المميز)

³⁹⁹ *Al-Mughnī* (7479)

⁴⁰⁰ In the Arabic language the word *Tifl* (طفل) is used to describe a child under the age of three, however some consider it to be under seven years old, while

their speech is not afforded any consideration and therefore cannot be used to establish any rulings.”⁴⁰¹

Al-Ḥāfidh ibn Ḥajar رَحْمَةُ اللَّهِ عَلَيْهِ also makes this distinction in *Fath al-Bārī* (6/274) saying, “As for ibn Mundhir’s statement about the covenant of security granted by the child, ‘The people of knowledge have a consensus that the covenant of security issued by the child is not valid.’ I say that others have made a distinction between the adolescent, (or) the discerning and comprehending child, and other than these.”

The scholars in the preceeding statements are referring to the minor who, while not having reached the age of *Taklīf* (legal responsibility), nevertheless display a relatively sound interlect, decision-making process, and level of maturity.

حكم أمان الأسير

THE COVENANT OF SECURITY GIVEN BY THE PRISONER

Ibn Qudāmah رَحْمَةُ اللَّهِ عَلَيْهِ states in *al-Mughnī* (9/242), “Owing to the generality of the narration, the covenant of security issued by the prisoner is valid, granted that it is not issued under duress. This is due to him being a responsible (*Mukallaf*) Muslim who is not compelled (in this issue), and as such, he resembles the free person in this regard. Likewise (sharing in the same ruling) is the worker and trader in *Dār al-Ḥarb*, and this is the position of ash-Shāfi’ī. However, ath-Thawrī considers that none of their covenants of security are valid.”⁴⁰²

others such as Abū Haytham consider it to refer to any child under the age of puberty

⁴⁰¹ *Al-Mughnī* (7480)

⁴⁰² *Al-Mughnī* (7479)

أمان الذمّي

THE COVENANT OF SECURITY ISSUED BY THE DHIMMĪ

According to the *Ijmā'*, as reported by scholars such as ibn Mundhir رَحِمَهُ اللهُ, the covenant of security issued by the *Dhimmī* is not valid.

He states, “The majority of the people of knowledge we take (knowledge) from have a consensus that the covenant of security given by the *Dhimmī* is not valid. This opinion is held by the likes of al-Awzā'ī al-Layth ibn Sa'd, Sufyān ath-Thawrī, ash-Shāfi'ī, Aḥmad, Ishāq, and the Ḥanafī's (رَحِمَهُمُ اللهُ).” He then proceeds to explain that, like the child, the *Imām* has the choice to either ratify their covenant or reject it. Although, if he does reject it the *Ḥarbī* should not be killed or imprisoned, rather he should be conveyed to a place of safety (for him).⁴⁰³

القدر الذي يصح أن يعطية الإمام والأمرء والأفراد

THE AUTHORITY TO ISSUE COVENANTS OF SECURITY POSSESSED BY THE IMĀM, THE LEADERS, AND THE INDIVIDUAL MUSLIMS

It is not permissible, or valid, for a general member of the Muslim public to grant a covenant of security, except to an individual or small group of disbelievers. For larger groups, the

⁴⁰³ Refer to *al-Ijmā'* (p.64) and *al-Awsaṭ* (11/263)

Imām or one of his representatives, are the only ones commanding the authority to grant such a covenant.

In *al-Mughnī* (9/242) ibn Qudāmah رَحِمَهُ اللهُ states, “The covenant of security given by the *Imām* to (a large group) of the disbelievers or their individuals is valid, as in general his jurisdiction encompasses all of the Muslims. Also valid is the security covenant issued by the (military) leader (*Amīr*) to the disbelievers he is faced with. However, with regards to other than them (i.e. those outside the realm of his authority or the area of his operations) he is just like any other Muslim, as his jurisdiction reaches only as far as those he is fighting, and does not extend to other than them. The covenant issued by individuals Muslims is valid for (up to) ten disbelievers, small caravans (i.e. convoys), and small fortresses [...]. Although, his covenant regarding the inhabitants of a city, town, village, or a large number (of disbelievers) is not valid, and would lead to the suspension of *Jihād*, and as such, the *Imām* is the only one with the authorisation to make such decisions.”⁴⁰⁴

صفة التأمين وما يقع به من قول أو عمل

CHARACTERISTICS OF THE COVENANT OF SECURITY, AND WHAT CONSTITUTES IT'S ISSUANCE WITH REGARDS TO SPEECH AND ACTIONS

Ibn Qudāmah رَحِمَهُ اللهُ explains in *al-Mughnī* (9/322):

“The two statements mentioned in the *Sharī'ah* are *Ajartuk* (أجرتك) and *Amantuk* (أمنتك)⁴⁰⁵ due to the words of Allāh (9:6):

⁴⁰⁴ *Al-Mughnī* (7481)

⁴⁰⁵ These words roughly translate as, ‘I have given you (a covenant of) safety’

﴿وَإِنْ أَحَدٌ مِّنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ﴾

And if any one of the polytheists seeks your protection, then grant him protection...

In addition, the Prophet ﷺ said to Umm Hānī رضي الله عنها:

قَدْ أَجَرْنَا مَنْ أَجَرْتَ، وَأَمَّنَّا مَنْ أَمَّنْتَ

“We have given security to those whom you have given it.”⁴⁰⁶

He ﷺ also said:

مَنْ دَخَلَ دَارَ أَبِي سُفْيَانَ فَهُوَ آمِنٌ، وَمَنْ أَغْلَقَ عَلَيْهِ بَابَهُ فَهُوَ آمِنٌ

“Whoever enters the house of Abū Sufyān is safe and whoever (stays in his house and) locks his door is safe.”⁴⁰⁷

⁴⁰⁶ Sunan Abī Dāwūd: The Book of Jihād (2763). The full text of the Ḥadīth is as follows:

عَنِ ابْنِ عَبَّاسٍ، قَالَ: حَدَّثَنِي أُمُّ هَانِيٍّ بِنْتُ أَبِي طَالِبٍ، أَنَّهَا أَجَارَتْ رَجُلًا مِّنَ الْمُشْرِكِينَ يَوْمَ الْفَتْحِ فَأَتَى النَّبِيَّ ﷺ فَذَكَرَتْ ذَلِكَ لَهُ، فَقَالَ: «قَدْ أَجَرْنَا مَنْ أَجَرْتَ، وَأَمَّنَّا مَنْ أَمَّنْتَ»

Ibn ‘Abbās رضي الله عنهما narrates: “Umm Hānī, the daughter of Abī Tālib told me that she granted security to a man from the polytheists on the day of the conquest (of Makkah), and then went to the Prophet ﷺ and informed him, so he said, ‘We have given security to those whom you have given it.’”

A similar, albeit longer narration detailing the same incident is in *Ṣaḥīḥ al-Bukhārī: The Book of Khumus* (3171). Its full text has preceded on pgs.322&323

⁴⁰⁷ Sunan Abī Dāwūd: The Book of Tribute, Spoils, and Leadership (3021).

The full text of the ḥadīth is as follows:

عَنِ ابْنِ عَبَّاسٍ، أَنَّ رَسُولَ اللَّهِ ﷺ عَامَ الْفَتْحِ، جَاءَهُ الْعَبَّاسُ بْنُ عَبْدِ الْمُطَّلِبِ بِأَبِي سُفْيَانَ بْنِ حَرْبٍ فَأَسْلَمَ بِمَرِّ الظَّهْرَانِ، فَقَالَ لَهُ الْعَبَّاسُ: يَا رَسُولَ اللَّهِ، إِنَّ

Meaning the same as these phrases is to say, 'don't be afraid,' 'don't be startled,' 'don't be scared,' 'there is no harm upon you,' and 'let there be no fear upon you.'⁴⁰⁸

It was narrated that 'Umar said, 'If you say, "There is no harm," "don't be afraid," or "*matras*,"⁴⁰⁹ you have indeed granted them your protection, for certainly Allāh the Exalted knows the tongues (i.e. the different languages and dialects).'⁴¹⁰

أَبَا سُفْيَانَ رَجُلٌ يُحِبُّ هَذَا الْفَخْرَ، فَلَوْ جَعَلْتَ لَهُ شَيْئًا، قَالَ: «نَعَمْ، مَنْ دَخَلَ دَارَ أَبِي سُفْيَانَ فَهُوَ آمِنٌ، وَمَنْ أَغْلَقَ عَلَيْهِ بَابَهُ فَهُوَ آمِنٌ»

Al-'Abbās ibn 'Abd ul-Muṭṭalib brought Abū Sufyān ibn Ḥarb to the Messenger of Allāh ﷺ in the year of the conquest (of Makkah). So he embraced Islām at Marr ath-Thahrān. Al-'Abbās said to him, "Messenger of Allāh, Abū Sufyān is a man who likes pride, may you may do something for him?" He said, "Yes: he who enters the house of Abū Sufyān is safe, and he who closes his door is safe." And in another narration, "... and he who enters the masjid (i.e. the Masjid al-Ḥarām) is safe."

A longer narration detailing the conquest of Makkah is found in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1780), with the addition:

وَمَنْ أَلْقَى السَّلَاحَ فَهُوَ آمِنٌ

"Whoever lays down his weapons is safe."

⁴⁰⁸ All of these phrases have been translated from Arabic, therefore they should be substituted for their equivalents in English (or any other language spoken by the Muslims and/or disbelievers) which may vary from time to time, region to region, and dialect to dialect, however they all have similar meanings

⁴⁰⁹ According to Muṣṭafā al-Baghā in his footnotes on *Ṣaḥīḥ al-Bukhārī*, '*matras*' is a Persian word meaning, 'don't be scared'

⁴¹⁰ Al-Bukhārī رحمه الله in his *Ṣaḥīḥ: The Book of Jizyah and Mawāda'ah*, recorded a *Mu'allaq* (hanging) version of this narration in the chapter (11) *If Non-Muslims (in war) Say: 'Saba'nā' and could not say 'Aslamnā'*:

وَقَالَ ابْنُ عُمَرَ: فَجَعَلَ خَالِدٌ يَقْتُلُ، فَقَالَ النَّبِيُّ ﷺ: «أَبْرَأُ إِلَيْكَ مِمَّا صَنَعَ خَالِدٌ» وَقَالَ عُمَرُ: إِذَا قَالَ مَتَرَسٌ فَقَدْ آمَنَهُ، إِنَّ اللَّهَ يَعْلَمُ الْأَلْسِنَةَ كُلَّهَا، وَقَالَ: تَكَلَّمْ لَا بَأْسَ

Ibn 'Umar said, "So when Khālid killed (him), the Prohet ﷺ said, '(O Allāh) I disavow myself to You from what Khālid has done.'" And 'Umar said, "If

While in another narration, ‘If one man said to another, “Don’t be afraid,” he has indeed granted him security [...] for certainly Allāh the Exalted knows the tongues.’

It was narrated that ‘Umar said to Hurmuzān, ‘Speak, and do not worry,’ then while he was speaking ‘Umar ordered he be killed. Thereupon Anas ibn Mālik said, ‘You cannot do that; you granted him security.’ ‘Umar replied, ‘No (I did not)!’ Az-Zubayr then said, ‘You said: speak and do not worry,’ so ‘Umar desisted from executing him. This was narrated by Sa’īd and others, and we do not know of any difference of opinion concerning any of it.⁴¹¹

According to our companions, if he said to him, ‘stand,’ ‘stop,’ or ‘put down your weapon,’ then these (phrases) also constitute covenants of security, due to the disbeliever believing that he has been given security; hence, they resemble the phrase, ‘I have given you security.’ Al-Awzā’ī said, ‘If the disbeliever is called then he has been given safety, or if he says, “I only stopped (surrendered) because you called (me),” this constitutes security; as if he was not called he would not have responded (favourably). However, it is possible that it does not constitute a covenant of security due to him (i.e. the Muslim) not perceiving his utterance as such - rather it was only used in order to strike terror and fear (into his enemies heart). Therefore, it would not constitute security in this instance [...].⁴¹² Rather it returns to the (intent) of the fighter, if he

he says ‘*Matras*,’ or ‘Speak, there is no harm (upon you),’ he has indeed been granted security. Indeed Allāh knows every tongue (i.e. every language and dialect, and their intended meanings).”

⁴¹¹ Sa’īd ibn Mansūr in his *Sunan* (2670), ibn Abī Shaybah (33402), *al-Awsaṭ* (11/265), and ibn Ḥajar says in *Fath al-Bārī* (6/275) its *Isnād* is authentic

⁴¹² In much the same way as western police (and militaries) tactically seek to intimidate their foes into submission with their use of violent and explicit language and aggressive commands. This tactic is well known to people that

says that I intended (by my words) to grant him security, then he (i.e. the disbeliever) is safe. Although, if he says that he did not intended security, we would then examine the disbeliever: if he says that he believed that he was granted security, he should be returned to place of security and it is not permissible to kill him. However, if he did not believe he was given security, then he has no covenant (and may be killed or held as a POW).”⁴¹³

[End of ibn Qudāmah quote]

الأمان بالإشارة

GRANTING A COVENANT OF SECURITY BY GESTURE

In *al-Mughnī* (9/323) ibn Qudāmah رَحِمَهُ اللَّهُ says, “If the Muslim motions to them (i.e. the disbelievers) in a way they understand to be a covenant of security, then says that he intended to grant them security, they have security. Consequently, if the disbelievers come out of their fortresses based upon this gesture, it is not permissible to kill them, rather they should be returned to their place of safety.

Sa’īd reported that ‘Umar said, ‘By Allāh, if one of you killed a disbeliever after having gestured by pointing his finger towards the sky (and then) towards the disbeliever, and then he descends according to this covenant, I would have certainly killed him (i.e. the treacherous Muslim) for it.’

have come into contact with western, notably US and British, police, security, and military forces as they conduct raids on homes and the like

⁴¹³ *Al-Mughnī* (7630)

According to the statement of Mālik, ash-Shāfi'ī, and ibn Mundhir, if the Muslim (who issued the covenant of security) dies or is absent, then the rest of the Muslims should return the disbeliever to his place of safety.

However if it is said, 'How can the covenant of security by gesture be valid while one is able to speak, unlike the (contracts) regarding buying, divorce, and the freeing of slaves?' We say [...] in most instances the disbelievers do not understand the speech of the Muslims nor do the Muslims understand their's, and as such there exists a need for communication through gestures, as opposed to other than them (from the above situations).”⁴¹⁴

Ibn al-Mundhir says in *al-Awsat* (11/246), 'Mālik and ash-Shāfi'ī say the gesturing of the covenant of security is (valid as means to grant) a covenant of security.' [...] Abū Bakr said, 'The gesture of security, if understood (by the disbeliever as such), takes the place of speech, with its evidence being in the fact that the Prophet ﷺ gestured to those praying behind him to sit, so they sat.'”

Likewise, as in the narration reported by Abū Dāwūd رحمه الله in his *Sunan: The Book Jihād* (2683), Mus'ab ibn Sa'd narrated that his father رضي الله عنه said:

لَمَّا كَانَ يَوْمُ فَتْحِ مَكَّةَ أَمَّنَ رَسُولُ اللَّهِ ﷺ النَّاسَ إِلَّا أَرْبَعَةً نَفَرٍ وَأَمْرَاتَيْنِ وَسَمَاهُمْ. - وَابْنُ أَبِي سَرْجٍ، فَذَكَرَ الْحَدِيثَ - قَالَ: وَأَمَّا ابْنُ أَبِي سَرْجٍ فَإِنَّهُ اخْتَبَأَ عِنْدَ عُثْمَانَ بْنِ عَفَّانَ، فَلَمَّا دَعَا رَسُولُ اللَّهِ ﷺ النَّاسَ إِلَى الْبَيْعَةِ جَاءَ بِهِ حَتَّى أَوْقَفَهُ عَلَى رَسُولِ اللَّهِ ﷺ، فَقَالَ: يَا نَبِيَّ اللَّهِ بَايَعَ عَبْدَ اللَّهِ، فَرَفَعَ رَأْسَهُ فَنَظَرَ إِلَيْهِ ثَلَاثًا كُلُّ ذَلِكَ يَأْتِي فَبَايَعَهُ بَعْدَ ثَلَاثٍ، ثُمَّ

⁴¹⁴ *al-Mughnī* (7631). Also refer to *Rawḍah at-Tālibīn* (10/279), and *Kashshāf al-Qinā'* (3/106)

أَقْبَلَ عَلَى أَصْحَابِهِ فَقَالَ: «أَمَّا كَانَ فِيكُمْ رَجُلٌ رَشِيدٌ يَقُومُ إِلَى هَذَا حَيْثُ رَأَيْتُ كَفَفْتُ يَدِي عَنْ بَيْعَتِهِ فَيَقْتُلُهُ؟» فَقَالُوا: مَا نَذَرِي يَا رَسُولَ اللَّهِ، مَا فِي نَفْسِكَ إِلَّا أَوْمَاتٌ إِلَيْنَا بِعَيْنِكَ. قَالَ: «إِنَّهُ لَا يَنْبَغِي لِنَبِيِّ أَنْ تَكُونَ لَهُ حَائِنَةٌ الْأَعْيُنِ»

On the day Makkah was conquered, the Messenger of Allāh ﷺ gave protection to the people except four men, with ibn Abū Sarḥ being one of them, and two women that he had named.

He (Sa'd) then narrated the incident and said, "Ibn Abī Sarḥ hid himself with 'Uthmān ibn 'Affān. When the Messenger of Allāh ﷺ called the people to take the oath of allegiance, he brought him and made him stand before the Messenger of Allāh ﷺ. He said, 'O Prophet of Allāh, accept the oath of allegiance from him.' He raised his head and looked at him thrice, denying him every time. After the third time he acknowledged his oath. He then turned to his Companions and said, *'Is not there any intelligent man among you who would arise when he saw me desisting from acknowledging his oath of allegiance, and kill him?'* They replied, 'We do not know, O Messenger of Allāh, what lies in your heart; why did you not give us a hint with your eye?' He said, *'It is not befitting for a Prophet to have a treacherous eye.'*" 415, 416

Al-Imām 'Abd al-Barr رحمه الله said in *al-Istidhkār* (5/35), "Mālik was asked about the issuance of the covenant of security by gesture: 'Is it (considered) to be a substitute for speech?' He

⁴¹⁵ Al-Albānī graded the *ḥadīth* as authentic. A longer narration is also found in *Sunan an-Nasā'ī: The Book of Fighting [The Prohibition of Bloodshed]* (4067)

⁴¹⁶ In addition, in many of the *Mujāhidīn's* operations all of their communication within their unit(s) is done via gestures to not alert the disbelievers of their presence. Accordingly, the *Amīr* of the unit conveys tactical information and commands his subordinates to stop, move, hold their fire, kill, and so on, using only hand signals

replied, ‘Yes, and I view those who proceed the armies (i.e. the advanced guard or scouts) should not kill anyone given a signal (implying) a covenant of security. I hold that the gesture of security takes the place of speech, and it has been conveyed to us that ‘Abdullāh ibn ‘Abbās said, “A people do not act treacherously towards their covenants, except that Allāh gives their enemy authority over them.”’

(Additionally) Ibn ‘Umar said, ‘If the blood of the disbelieving enemy fighter becomes impermissible due to a covenant of security, then what about the believer who awakens in the morning and walks with Allāh’s protection? What do you think about being treacherous with him and assassinating (him)? Indeed, he رضي الله عنه said:

الْإِيمَانُ قَيْدُ الْقَتْلِ لَا يَفْتِكُ مُؤْمِنٌ

“*Belief prevented assassination. A believer should not assassinate.*”⁴¹⁷

He also said (5/33), ‘Treachery is that you grant a person security and then kill him, and this is *Ḥarām* by consensus, and treachery and (unjust) killing are one and the same.’”

Accordingly, it is not permissible to kill, imprison, or enslave the one given a covenant of security (*al-Musta'man*), unless they subsequently commit a crime warranting it or breach of their covenant, as this is the treachery prohibited by consensus. Although jurists such as the Mālikī's رحمهم الله, stipulated that for the

⁴¹⁷ *Sunan Abī Dāwūd: The Book of Jihād* (2769). Al-Albānī graded it as *Ṣaḥīḥ* in his *Ṣaḥīḥ wa Ḍa'īf Abī Dāwūd* (2769). It says in 'Awn al-Ma'būd (7/324), “The meaning of the *Ḥadīth* is that *Īmān* prevents *Fitk*, which is treacherously assassinating the (disbeliever) after they have been given a covenant of security...” However, the legislated and praiseworthy assassination, such as the assassinations of Khālīd ibn Sufyān al-Hadhilī and Aswad al-Ansī, and the treacherous Jews - Ka'b ibn Ashraf and Abū Rāfi', were far from falling under the implications of this *Ḥadīth*

validity of the covenant to remain intact it must not entail any harm for the Muslims. Therefore, the covenant of security given to the spy or anyone else whose presence amongst the Muslims is harmful is not valid.⁴¹⁸

In *Ḥāshiyah al-'Udwī* (2/9), *Imām al-'Udwī al-Mālikī* رَحْمَةُ اللَّهِ comments on the phrase, 'If security is given to the spy...' saying, "The spy should be killed immediately, except if he embraces Islām, or the *Imām* considers it more beneficial to enslave him."

Al-Khaṭīb ash-Sharbīnī ash-Shāfi'ī رَحْمَةُ اللَّهِ says in *Mughnī al-Muḥtāj* (6/53), "It is neither permissible nor valid to grant security to one who harms the Muslims, such as the spy or (military) reconnoitre (as),

لَا ضَرَرَ وَلَا ضِرَارَ

'There is neither harming nor reciprocating of harm.'⁴¹⁹

And it is a must, like the *Imām* said, that security is not issued (to somebody) who is then murdered, as the likes of this falls within the realms of treachery."

Ash-Sharbīnī is saying here that such individuals should not be given covenants of security in the first place, so as to avoid the treacherous act of apparently granting them a pledge and then violating it by killing, or imprisoning its recipient (although they have yet to breach the terms of their covenant). However, a number of scholars do not hold this to be the case such as *Imām al-Ghazālī* رَحْمَةُ اللَّهِ who listed two conditions (for the validity of the covenant), with the first of them being, "There is no harm (in it) upon the Muslims; (such as) them being spies. If they turn out to

⁴¹⁸ Refer to *adh-Dhakhīrah* (3/446) and *Ḥāshiyah ad-Dasūqī* (2/182)

⁴¹⁹ *Sunan ibn Mājah: The Book on Rulings* (2340&2341) and *al-Muwaṭṭa'*: The Book of Judgements (1435)

be so then they should be killed; and we do not care about their ‘covenant.’ Neither is there any condition that recognises the presence of a benefit that nullifies this harm (i.e. the harm of them being a spy, or its likes).”⁴²⁰

In *Rawḍah aṭ-Ṭālibīn* (10/281) an-Nawawī رَحِمَهُ اللهُ rules, “It is conditional that the covenant does not entail any harm upon the Muslims, and if a spy or enemy agent should be given safety the covenant does not take affect (i.e. it is not valid). The *Imām* said, ‘and it is (also) not their right to be taken to their place of safety, as their entrance (into the lands of the Muslims) is, in itself, similar to an act of treachery, therefore it is their right that they be assassinated.’”

In light of the these statements from the major scholars of the four schools of jurisprudence, the false claim a number of Muslims have been deceived by today; of there existing a valid covenant of security between Muslims residing in the West and their host nations becomes apparent. A covenant that prevents the Muslims from fulfilling their religious obligation to wage *Jihād* against the leaders of disbelief; those who openly mock Allāh ﷻ and His Messengers عَلَيْهِمُ السَّلَامُ, and wage a relentless war against the religion. Similarly false is the claim of the validity of covenants of security for those disbelievers residing in, or visiting the Muslim lands for the purposes of monitoring the Muslims, plundering their wealth and natural resources. In addition to their spreading of evil and vice, and constructing military bases from which they are able to launch their assaults into the Muslim world for a fraction of the cost had they have been in Europe or North America. This is even if we did consider the ‘leaders’ who allegedly issued these covenants to be Muslims in the first place. Consequently, the treatment afforded to the aforementioned disbelievers, especially their leaders, military and security personnel, and government officials, should be like that of any other invading and transgressing *Ḥarbī* - and with

⁴²⁰ *Al-Wasīṭ* (7/44)

Allāh do we seek help to purify the lands of Islām from their filth.⁴²¹

من طلب الأمان بشرط

WHOEVER REQUESTED A CONDITIONAL COVENANT OF SECURITY

In *al-Mughnī* (9/247) *Imām* ibn Qudāmah narrates, “Aḥmad رَحِمَهُمُ اللَّهُ said if a man says, ‘leave me until I lead you to such-and-such a place,’ and (owing to this) a group are dispatched with him, but he refuses to lead them (to where he initially said). They should cut off his head, as his covenant of security was dependant upon a condition which was not fulfilled.’ Aḥmad (also) said, ‘If a man comes across a disbeliever who requests from him security however he should not grant it to him due to being apprehensive regarding the disbeliever harming (him). Although if they are a detachment then they should grant him security, as the larger group, unlike the individual (Muslim), does not fear the solitary disbeliever (being able to be) treacherous and (thus) kill them. Although if the detachment encounters (a similar number of) armed disbelievers who have come to them claiming that they are seeking a covenant of security, their claim should not be accepted, as the presence of their weapons is indicative of their intentions to fight. But if they are unarmed, then their claim should be accepted as this (i.e. being unarmed) is indicative of their truthfulness.’”⁴²²

As such, how can it be valid to issue a covenant to an entire army of disbelievers that have imposed themselves, their weapons, and

⁴²¹ Indeed Allāh ﷻ says about them (9:28):

﴿إِنَّمَا الْمُشْرِكُونَ نَجَسٌ﴾

Indeed the polytheists are nothing but filthy

⁴²² *Al-Mughnī* (7490)

their corrupt ‘values’ upon the Muslims, as a deterrent to the Muslims opposing their evil designs in any way? The Americans physical occupation of the Arabian Peninsula, Afghanistan, Iraq, Syria, Yemen, and elsewhere in the Muslim world. The Russians’ occupation in Syria, Chechnya, and the entire Caucasus region in general. The Chinese occupation (and genocide) of the East Turkestan (Xinjiang) region. And lest we forget, the Zionists criminal occupation of Palestine, are all examples of the reality of such ‘covenants’ issued by the Muslim ‘rulers.’

It is most perplexing that the one, whom Allāh honoured with Islām, and a brain, recognises the aforementioned disbelievers’, presence in the Muslim world as anything less than an act of outright aggression. Neither does he recognise the outright treachery to Allāh, His Messenger ﷺ, and the believers on the part of those who welcome and/or accept their presence in the Muslim’s lands. The Messenger ﷺ certainly spoke the truth when he said:

يُوشِكُ الْأُمَمُ أَنْ تَدَاعَى عَلَيْكُمْ كَمَا تَدَاعَى الْأَكْلَةُ إِلَى قَصْعَتِهَا، فَقَالَ قَائِلٌ: وَمِنْ قَلَّةٍ نَحْنُ يَوْمَئِذٍ؟ قَالَ: بَلْ أَنْتُمْ يَوْمَئِذٍ كَثِيرٌ، وَلَكِنَّكُمْ غُثَاءٌ كَغُثَاءِ السَّيْلِ، وَلَيَنْزَعَنَّ اللَّهُ مِنْ صُدُورِ عَدُوِّكُمْ الْمَهَابَةَ مِنْكُمْ، وَلَيَقْذِفَنَّ اللَّهُ فِي قُلُوبِكُمُ الْوَهْنَ، فَقَالَ قَائِلٌ: يَا رَسُولَ اللَّهِ، وَمَا الْوَهْنُ؟ قَالَ: حُبُّ الدُّنْيَا، وَكَرَاهِيَةُ الْمَوْتِ

“The people will soon summon one another to attack you as people when eating invite others to share their dish.” Someone asked, “Will that be because of our small numbers at that time?” He replied, “No, you will be numerous at that time: but you will be scum and rubbish like that carried down by a torrent, and Allāh will take fear of you from the breasts of your enemy and cast Wahn into your hearts.” Someone asked, “What is Wahn, O

Messenger of Allāh?” He replied, “Love of this world and hatred of death.”⁴²³

Moreover, in another *Ḥadīth* reported by Abū Dāwūd رَحِمَهُ اللَّهُ in his *Sunan: The Book of Wages* (3462) the Prophet ﷺ said:

إِذَا تَبَايَعْتُمْ بِالْعَيْنَةِ، وَأَخَذْتُمْ أَذْنَابَ الْبَقَرِ، وَرَضِيتُمْ بِالزَّرْعِ، وَتَرَكْتُمُ الْجِهَادَ، سَلَطَ اللَّهُ عَلَيْكُمْ ذُلًّا لَا يَنْزِعُهُ حَتَّى تَرْجِعُوا إِلَى دِينِكُمْ

“When you enter into the ‘*Īnah* (a type of usurious transaction), hold onto the tails of cattle, are pleased with agriculture, and abandon *Jihād*. Allāh will make disgrace prevail over you, and will not withdraw it until you return to your religion (i.e. *Jihād*).”

من دخل دار الإسلام بغير أمان

THE DISBELIEVER THAT ENTERS DĀR AL-ISLĀM WITHOUT A COVENANT OF SECURITY

Ibn Qudāmah رَحِمَهُ اللَّهُ states, “If the disbeliever (*Ḥarbī*) enters *Dār al-Islām* without a covenant of security he should be examined to see whether he has goods to sell in *Dār al-Islām*, as it is customary for them to come us as traders without a covenant and (therefore) they should not be turned away. Aḥmad says ‘If disbelieving traders come to us by sea from the enemy lands, they should be welcomed and not dealt with harshly, turned away or fought. No one who enters *Dār al-Islām* from *Dār al-Ḥarb* for trade, and has with him goods should be asked about anything. However, if he does not have any goods with him but says, ‘I have come with (or seeking) a covenant’ do not accept it from him, (rather) the *Imām* has the choice regarding him. This is (also) the opinion of al-Awzā’ī and ash-Shāfi’ī. If however, he

⁴²³ *Sunan Abī Dāwūd: The Book of Battles (al-Malāḥim)* (4297)

has lost his way, or the wind carried his ship to us, he is for whoever captures him (i.e. he and his belongings become their property, or they can decide to kill him) according to the first of two reports; with the second holding that he becomes *Fay'*.”⁴²⁴

من دخل دار العدو بأمان أو بغير أمان

WHOEVER ENTERS THE LAND OF THE ENEMY WITH, OR WITHOUT A COVENANT OF SECURITY

In the *Masā'il* (p.253) of 'Abdullāh ibn Imām Aḥmad رَحِمَهُمُ اللَّهُ, he says, “I asked my father about a man that enters the enemy's lands then steals money, riding beasts, or other than these from them. He said, ‘If he had a covenant, he is not allowed to steal, take anything from their wealth (unjustly), sell a *dirham* for two *dirhams*, or commit fornication⁴²⁵ in their lands. **However, if he entered without a covenant there is no problem if he takes from them.**”⁴²⁶

In *al-Mughnī* (9/295) ibn Qudāmah رَحِمَهُمُ اللَّهُ writes, “Whoever enters the enemy's lands with a covenant of security is not allowed to commit treachery with regards to their wealth.” He continues, “As being treacherous towards them is *Ḥarām*, owing to them granting him security on the condition that he does not behave treacherously towards them and as such, they are safe from him, even if this was not explicitly stated (in their contract), as it is something that goes without saying. Similarly, whoever from them comes to us with a covenant, and then behaves

⁴²⁴ *Al-Mughnī* (9/247), (7491)

⁴²⁵ It appears that the *Imām* رَحِمَهُمُ اللَّهُ is referring here to the act of capturing the disbelieving women as a slave girls (i.e. concubines), then proceeding to engage in intimacy after the completion of her '*Iddah* (waiting period), and Allāh knows best

⁴²⁶ *Masā'il al-Imām Aḥmad Riwayah ibnih 'Abdullāh* (940)

treacherously towards us has nullified his covenant. Thus, if (the Muslim's) covenant is confirmed it is not allowed for him to commit treachery, as treachery is not something befitting in our religion. Indeed, the Prophet ﷺ said:

المُسْلِمُونَ عِنْدَ شُرُوطِهِمْ

'The Muslims are bound by their conditions.'⁴²⁷

Therefore, if he commits treachery, steals from them, or (even) borrows something, it is *Wājib* upon him to return whatever he took to its owner. Similarly, if its owners come to *Dār al-Islām* with a covenant, or after having believed, their property should be returned to them, and failing this, it should be sent to them. This is a result of the Muslim taking it in an impermissible fashion; hence, it is binding upon him to return whatever he took (from them) in the same way as if he took it from a Muslim."⁴²⁸

The Ḥanafīs say, "If a Muslim enters *Dār al-Ḥarb* as a trader it is not allowed for him to transgress against their wealth or blood. As he, by virtue of his covenant of security, has the responsibility to refrain from them. To attack them after this, falls under the realms of treachery, and is *Ḥarām* by consensus. (However,) an exception is that their king (or ruler) is treacherous (towards his people), knows the Muslim is looting their wealth, kidnapping them, and so on, but does not prevent him (i.e. he condones his actions)..."⁴²⁹

In summary, Syed Quṭb رحمه الله writes in his commentary, *In the Shade of the Qur'ān* (7/154), "Islām wants humanity to rise above worldly temptations and to be sublime. Hence, it does not allow treachery for the sake of achieving a cheap victory at a

⁴²⁷ Narrated by ad-Dārquṭnī (3/27), Ḥākim in *al-Mustadrak* (2310), and others. Al-Albānī declared it authentic in his *as-Silsilah aṣ-Ṣaḥīḥah* (2915)

⁴²⁸ *Al-Mughnī* (7587)

⁴²⁹ *Hashiyah ibn 'Ābidīn* (4/166)

time when it strives for the noblest of causes and aims. People who have honourable aims cannot utilize dishonourable means. Islām finds treachery repugnant and looks at traitors who violate their treaties with contempt. Therefore, it does not accept that Muslims violate their covenants for the achievement of any objective, noble as it may be. The human soul is a complete whole. When it allows itself to resort to disgraceful means, it cannot maintain its noble aims. He is not a Muslim who claims that the ends justify the means. Such a principle is alien to Islamic thinking and cannot fit with Islamic sensitivities. Within the human self - there can be no gulf to separate the ends from the means. Reaching a clean shore does not tempt a Muslim to walk through a muddy pool, because the shore will not remain clean after dirty feet have walked there. Hence,

﴿إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ﴾

Allāh does not love the treacherous.”⁴³⁰

نواقض العقد الأمان

ACTIONS ON THE PART OF THE DISBELIEVERS THAT NULLIFY THE COVENANT OF SECURITY

Ibn Qudāmah رَحِمَهُ اللَّهُ says in *al-Mughnī* (9/354), “Regarding the affair (of the one who betrays his covenant betraying its terms, thus permitting his blood and wealth) [...] al-Qāḍī and ash-Sharīf Abū Ja’far point out that there are two aspects related to the conditions (of the covenant). The first is that he can breach the terms of his pledge by engaging in any one of ten matters:

1) Refusing to pay the *Zakāh*

⁴³⁰ *Sūrah al-Anfāl* (8):58

- 2) Attempting to evade our judgement concerning him if he is found guilty (of a crime) by a judge
- 3) Conspiring to kill a Muslim
- 4) Committing *Zinā* (fornication) with a Muslim woman
- 5) Doing the same under the guise of 'marriage'
- 6) Subjects a Muslim to trial (i.e. *Fitnah*) with regards to his religion
- 7) Commits banditry and murder
- 8) Harbours a spy from amongst the polytheists
- 9) Cooperates with the disbelievers against the Muslims by physically leading, or directing them to the Muslims' secrets
- 10) Mentions Allāh, His book, His religion or His Messenger ﷺ in an ill-mannered fashion

As for the first two instances, according to our school, there is no disagreement that they are a breach of covenant, having the same result as fighting against the Muslims, either with the disbelievers or alone. As these things, without exception, are breaches of covenant. Therefore, if they do these actions it is *Wājib* upon us to fight them.

As for the rest of the conditions, there are two reports concerning them; the first is that their covenant is nullified whether or not these things were (explicitly) included as conditions. However, the second holds that they do not nullify their covenant (unless they have been previously stated in their covenant)."

He continues, "Therefore, if he does something that requires a Prescribed Punishment or *Qiṣāṣ* then it should be applied to him. However, if his actions do not reach to the level of the Prescribed Punishment, he should be reprimanded and dealt with in such a way as to deter others. Thus, if anyone else wishes to emulate his actions he should be prevented. However, if he tries to resist using force then this invalidates his covenant.

We have ruled that whoever from them breaches his covenant is subject to the *Imām's* discretion. He may choose to execute, enslave, ransom or free; in the same way as we deal with the *Ḥarbī* prisoner we have overcome in our lands, who, no doubt does not possess a covenant or treaty.”⁴³¹

As is evident from the words of ibn Qudāmah رحمه الله, these acts are more applicable to individuals, however there is nothing to suggest that they cannot be applied to larger groups or states that the Muslims have treaties with. Another important point to highlight is the disbelievers employment of aircraft, drones, and various other means of electronic devices to spy on the Muslims is a direct breach of any treaty or covenant they may have had. At the very least, and it would appear to be a weak opinion, this would fall under the implications of the noble verse in *Sūrah al-Anfāl* (8:58) wherein Allāh ﷻ says:

﴿وَأَمَّا تَخَافُ مِنْ قَوْمٍ خِيَانَةً فَانْذِرْ إِلَيْهِمْ عَلَىٰ سَوَاءٍ ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ ﴿٥٨﴾﴾

***If you [have reason to] fear from a people betrayal,
throw [their treaty] back to them, [putting you] on
equal terms.***

In such an eventuality, the Muslims would be required to notify the disbelievers of the ceasation of their treaty before resuming any hostilities.

⁴³¹ *Al-Mughnī* (7686)

أصناف الكفار بالنسبة إلى العهود والأمان

CATEGORIES OF DISBELIEVERS IN RELATION TO COVENANTS AND TREATIES

With regards to covenants and treaties there exist a number of categories of disbelievers. Amongst them are those it is *Wājib* to grant safety under normal circumstances. Such as those interested in learning about Islām. Allāh ﷻ says about such people in *Sūrah at-Tawbah* (9:6):

﴿وَإِنْ أَحَدٌ مِنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّى يَسْمَعَ كَلِمَ
اللَّهِ ثُمَّ أَبْلِغْهُ مَأْمَنَهُ ذَلِكَ بِأَنَّهُمْ قَوْمٌ لَا يَعْلَمُونَ ﴿٦﴾﴾

And if any one of the polytheists seeks your protection, then grant him protection so that he may hear the words of Allāh [i.e., the Qur'ān]. Then deliver him to his place of safety. That is because they are a people who do not know.

Imām ibn Kathīr رَحِمَهُ اللَّهُ comments on the above verse in his *Tafsīr* (4/378), saying:

Allāh said to His Prophet ﷺ, *And if any one of the polytheists*, whom you were commanded to fight and We permitted for you their blood and property, *seeks your protection*, asked you for safe passage, then accept his request until he hears the Words of Allāh, the Qur'ān. Recite the Qur'ān to him and mention a good part of the religion with which you establish Allāh's proof against him, and *Then deliver him to his place of safety*, until he goes back to his land, his home, and area of safety, *That is because they are a people who do not know.*

The verse says, ‘We legislated giving such people safe passage so that they may learn about the religion of Allāh, and so that Allāh’s call will spread among His servants.’ Ibn Abī Najīḥ narrated that Mujāhid said that this verse, “Refers to someone who comes to you to hear what you say and what was revealed to you (O Muḥammad). Therefore, he is safe until he comes to you, hears Allāh’s Words and then proceeds to the safe area where he came from.” The Messenger of Allāh ﷺ used to thereafter grant safe passage to those who came to him for guidance or to deliver a message. On the day of Ḥdaybiyyah, several emissaries from Quraysh came to him, such as ‘Urwah ibn Mas’ūd, Mikraz ibn Ḥafṣ, Suhayl ibn ‘Amr and several others. They came mediating between him and the pagans of Quraysh. They witnessed the great respect the Muslims had for the Prophet ﷺ, which astonished them, for they never before saw such respect for anyone, neither kings nor czars. They went back to their people and conveyed this news to them; this, among other reasons, was one reason that most of them accepted the guidance.

When Musaylimah the Liar sent an emissary to the Messenger of Allāh ﷺ, he asked him, “*Do you testify that Musaylimah is a messenger from Allāh?*” He said, “Yes.” The Messenger of Allāh ﷺ then said:

لَوْلَا أَنَّ الرُّسُلَ لَا تُقْتَلُ لَضَرَبْتُ عُنُقَكَ

*“I would have certainly cut off your head, if it was not that emissaries are not killed.”*⁴³²

That man, ibn An-Nawwahāh, was later beheaded when ‘Abdullāh ibn Mas’ūd was the governor of al-Kūfah.

⁴³² Similar narrations are found in *Sunan Abī Dāwūd: The Book of Jihād* (2761&2762) and *Musnad Aḥmad* (15559). Al-Albānī graded them as *Ṣaḥīḥ*

When it became known that he still testified that Musaylimah was a messenger from Allāh. Ibn Mas'ūd summoned him and said to him, "You are not delivering a message now!" He commanded that ibn an-Nawwahah be decapitated, may Allāh curse him and deprive him of His mercy.

In summary, those who come from a land at war with Muslims to the area of Islām, delivering a message, for business transactions, to negotiate a peace treaty, to pay the *Jizyah*, to offer an end to hostilities, and so forth, and request safe passage from Muslim leaders or their deputies, should be granted safe passage, as long as they remain in Muslim areas, until they go back to their land and sanctuary.

[End of ibn Kathīr quote]

In *Zād al-Ma'ād* (2/22) ibn Qayyim رَحِمَهُ اللَّهُ says, after mentioning the above incident regarding the emissaries of Musaylimah the Liar, "His *Sunnah* was not to kill envoys." He also says (2/209), "The messenger(s) of the disbelievers are not to be killed."

Additionally, Allāh ﷻ mentions amongst this category those that agree to pay the *Jizyah*, saying:

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾ (٢٩)

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh

and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islam] from those who were given the Scripture - [fight] until they give the jizyah willingly while they are humiliated.⁴³³

The Messenger of Allāh ﷺ further clarified that if they opt to pay the *Jizyah* in a state of humiliation, there should be no further aggression directed against them. In the *Ḥadīth* of Buraydah رَضِيَ اللَّهُ عَنْهُ he ﷺ said:

فَإِنْ هُمْ أَبَوْا فَسَلِّهُمْ الْجِزْيَةَ، فَإِنْ هُمْ أَجَابُوكَ فَأَقْبِلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ

“If they refuse to accept Islām, demand from them the Jizyah. If they agree to pay, accept it from them and refrain (from fighting them).”

The discussion on who is entitled to pay the *Jizyah*, along with all of its related matters has preceeded, and thus will not be repeated here.

Next are those with whom it is permissable to conduct treaties. It is about these that Allāh ﷻ said:

﴿وَلِنْ جَنَحُوا لِلْسَّيْرِ فَاجْنَحْ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ إِنَّهُ هُوَ السَّمِيعُ

الْعَلِيمُ ﴿٦١﴾﴾

And if they incline to peace, then incline to it [also] and rely upon Allāh. Indeed, it is He who is the Hearing, the Knowing.⁴³⁴

And:

⁴³³ Sūrah at-Tawbah (9:29)

⁴³⁴ Sūrah al-Anfāl (8:61)

﴿فَمَا اسْتَقَمُّوْا لَكُمْ فَاسْتَقِيْمُوا لَهُمْ ۚ﴾

So as long as they are upright toward you, be upright toward them.⁴³⁵

Despite scholars being divided over the abrogation of the previous verse (8:61), the actions of the Companions رضي الله عنهم would appear to lead to the conclusion that they deemed the conducting of peace treaties with the disbelievers, if there was a benefit in it, permissible.⁴³⁶

While the **third** category are those whom Allāh has forbidden the believers from conducting any treaties with, owing to the formers established history of treachery and dishonesty with regards to their covenants with the believers.

Allāh ﷻ says about these treacherous people in *Sūrah al-Anfāl* (8:55-57):

﴿إِنَّ شَرَّ الدَّوَابِّ عِنْدَ اللَّهِ الَّذِينَ كَفَرُوا فَهُمْ لَا يُؤْمِنُونَ ۚ الَّذِينَ عَاهَدَتْ مِنْهُمْ ثُمَّ يَنْقُضُونَ عَهْدَهُمْ فِي كُلِّ مَرَّةٍ وَهُمْ لَا يَتَّقُونَ ۖ فَمَا تَقْفُهُمْ فِي الْحَرْبِ فَشَرَّدَ بِهِمْ مَن خَلْفَهُمْ لَعَلَّهُمْ يَدَّكَّرُونَ ۚ﴾

Indeed, the worst of living creatures in the sight of Allāh are those who have disbelieved, and they will not [ever] believe - The ones with whom you made a treaty but then they break their pledge every time, and they do not fear Allāh. So if you gain dominance over

⁴³⁵ *Sūrah at-Tawbah* (9:7)

⁴³⁶ Refer to the commentary on *Sūrah al-Anfāl* (8:58) in *Tafsīr ibn Kathīr*

them in war, disperse by [means of] them those behind them that perhaps they will be reminded.

While He ﷺ later rethorically asks the believers:

﴿كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ رَسُولِهِ﴾

How can there be for the polytheists a treaty in the sight of Allāh and with His Messenger ⁴³⁷

And He ﷺ continues, saying:

﴿كَيْفَ وَإِنْ يَظْهَرُوا عَلَيْكُمْ لَا يَرْفُقُوا فِيكُمْ إِلَّا وَلَا ذِمَّةً يُرْضُونَكُمْ بِأَفْوَاهِهِمْ وَتَأْبَىٰ قُلُوبُهُمْ وَأَكْثَرُهُمْ فَاسِقُونَ ﴿٨﴾
أَشْتَرُوا بِآيَاتِ اللَّهِ ثَمَنًا قَلِيلًا فَصَدُّوا عَنْ سَبِيلِهِ إِنَّهُمْ سَاءَ مَا
كَانُوا يَعْمَلُونَ ﴿٩﴾ لَا يَرْفُقُونَ فِي مُؤْمِنٍ إِلَّا وَلَا ذِمَّةً وَأُولَٰئِكَ
هُمُ الْمُعْتَدُونَ ﴿١٠﴾﴾

How [can there be a treaty] while, if they gain dominance over you, they do not observe concerning you any pact of kinship or covenant of protection? They satisfy you with their mouths, but their hearts refuse [compliance], and most of them are defiantly disobedient. They have exchanged the signs of Allāh for a small price and averted [people] from His way. Indeed, it was evil that they were doing. They do not observe toward a believer any pact of kinship or covenant of protection. And it is they who are the transgressors. ⁴³⁸

⁴³⁷ Sūrah at-Tawbah (9:7)

⁴³⁸ Sūrah at-Tawbah (9:8-10)

“That is, how can there be a covenant for them when, if they overpower you, they pay no regard to the ties of kinship/relation nor covenant! So we know that whoever's condition is such that if they were to overpower us, they would disregard any covenant between us and them. As such, there is no covenant for such people,” as noted by ibn Taymiyyah رَحِمَهُ اللهُ in *aṣ-Ṣārim al-Maslūl* (p.14).

Also falling into this category are those guilty of cursing, defaming, and slandering Allāh ﷻ, His Messenger ﷺ, or His religion. Allāh ﷻ says about them in *Sūrah at-Tawbah* (9:12):

﴿وَإِنْ تَكْثُرُوا أَيَّمَهُمْ مِّنْ بَعْدِ عَهْدِهِمْ وَطَعْنُوا فِي دِينِكُمْ فَقَاتِلُوا
أَيُّمَةَ الْكُفْرَانِ هُمْ لَا أَيْمَنَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ ﴿١٢﴾﴾

*And if they break their oaths after their treaty **and** defame your religion, then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease.*

The scholars have understood Allāh' words, **and defame your religion**, as referring to those who curse, defame, satirise, and otherwise speak-ill of any of Allāh's Prophets and Messengers عَلَيْهِمُ السَّلَامُ.

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللهُ says in *aṣ-Ṣārim al-Maslūl* (pgs.14&15) that the word **and** in the verse does not denote they must be guilty of both breaking the terms of their treaty(s), **and** of speaking ill of Allāh ﷻ and/or His Messenger ﷺ. Rather, engaging in either one of these violations is sufficient to forfeit any right to treaty or covenant. He also argues, “Whoever makes apparent their criticism of our religion, is providing evidence that if they were to overpower us they would not respect any

covenant.” Consequently, such people should not be afforded covenants or treaties in the first place.

Al-Hāfidh ibn Kathīr رَحِمَهُ اللهُ said in his *Tafsīr* (4/383), “Allāh says, if the idolators with whom you conducted peace treaties for an appointed term break **their oaths** meaning, terms of their treaties, and covenants **and defame your religion**... with disapproval and criticism. It is because of this that one who curses the Messenger ﷺ, or attacks the religion of Islām by way of criticism and disapproval, are to be killed. This is why Allāh said afterwards, **fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease**, so that they may refrain from the disbelief, rebellion and the transgression they indulge in.”

Likewise falling into this category are those, like the spy, whose harm represents and unacceptable risk to the Muslims, due to the Prophet ﷺ saying:

لَا ضَرَرَ وَلَا ضِرَارَ

“There is no harming, nor reciprocating of harm.”⁴³⁹

إِنْقِطَاعُ الْعُهُودِ وَالْأَمَانِ

THE TERMINATION OF TREATIES AND COVENANTS

The termination of the treaty or covenant takes place in a number of ways. They are as follows:

⁴³⁹ *Sunan ibn Mājah: The Book of Judgements* (2340), *Muwaṭṭa’*: *The Book of Judgements* (2171), and *Musnad Aḥmad: Musnad al-Anṣār* (22778&22779)

- 1) The treaty's term expires. Alternatively, the disbeliever(s), in the case of covenants of *Jiwār*, have been escorted safely out of the Muslims' territory and back to their places of safety.
- 2) The disbelievers violate the terms of the treaty or covenant.
- 3) The believers suspect treachery on the part of the disbelievers, and thus are required to terminate the treaty after notifying the latter of the treaty's termination.

Regarding the **first**, once, and not before, the disbeliever(s) have been escorted to their place of safety, the Muslims are free to attack, or resume any hostilities with the said disbeliever(s). This is evident in the following narration reported by Abū Dāwūd رَحِمَهُ اللَّهُ in his *Sunan: The Book of Jihād* (2759), wherein Sulaym ibn 'Āmir, a man from Ḥimyar, said:

كَانَ بَيْنَ مُعَاوِيَةَ وَبَيْنَ الرُّومِ عَهْدٌ وَكَانَ يَسِيرُ نَحْوَ بِلَادِهِمْ حَتَّى إِذَا انْقَضَى الْعَهْدُ غَزَاهُمْ، فَجَاءَ رَجُلٌ عَلَى فَرَسٍ أَوْ بِرَدَوْنٍ وَهُوَ يَقُولُ: اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ وَفَاءٌ لَا غَدَرٍ، فَنَظَرُوا فَإِذَا عَمْرُو بْنُ عَبْسَةَ فَأَرْسَلَ إِلَيْهِ مُعَاوِيَةُ فَسَأَلَهُ، فَقَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ كَانَ بَيْنَهُ وَبَيْنَ قَوْمٍ عَهْدٌ فَلَا يَشُدُّ عُقْدَةً وَلَا يَحُلُّهَا حَتَّى يَنْقَضِيَ أَمْدُهَا أَوْ يَنْبَذَ إِلَيْهِمْ عَلَى سَوَاءٍ» فَرَجَعَ مُعَاوِيَةُ

“There was a covenant between Mu’āwiyah and the Byzantines, however he was heading towards them so that when the covenant would expire he would (immediately) attack them. A man came riding a horse, or a packhorse exclaiming, ‘Allāhu Akbar! Allāhu Akbar! Let there be faithfulness and no treachery.’ When they looked they found it was ‘Amr ibn ‘Abasah. Mu’āwiyah sent for him and questioned him (about what he had said). He replied, ‘I heard the Messenger of Allāh ﷺ say, “When one has a covenant with a people, he must not strengthen it nor loosen it till its term comes to an end, or he brings it to an end in agreement with

them.”” Thereafter Mu’āwiyah returned (without attacking the Romans).” 440

This can also be seen in the practice of *The Sword of Allāh* Khālīd ibn al-Walīd رَضِيَ اللهُ عَنْهُ, as detailed by al-Wāqidi رَضِيَ اللهُ عَنْهُ in *Futūḥ ash-Shām* (1/83-81). After the ratification of Abū ‘Ubaydah’s رَضِيَ اللهُ عَنْهُ treaty with the people of Damascus in the year 14 *Hijrī*, in which whoever wanted to leave the city with their wealth and goods after the Muslims’ conquest was granted three days safe passage. And upon the completion of the agreed upon time-period, Khālīd ordered their pursuit and capture by a Muslim detachment before the disbelievers’ arrival in Antioch.⁴⁴¹

As for the **second** - those that break their treaties, Allāh ﷻ says about them:

﴿الَّذِينَ عَاهَدْتَ مِنْهُمْ ثُمَّ يَنْقُضُونَ عَهْدَهُمْ فِي كُلِّ مَرَّةٍ وَهُمْ لَا يَتَّقُونَ﴾ ﴿٥٦﴾ فَإِذَا تَقَفَّيْنَاهُمْ فِي الْحَرْبِ فَشَرَدَبِهِمْ مَنْ خَلْفَهُمْ لَعَلَّهُمْ يَدْكُرُونَ ﴿٥٧﴾

The ones with whom you made a treaty but then they break their pledge every time, and they do not fear Allāh. So if you gain dominance over them in war, disperse by [means of] them those behind them that perhaps they will be reminded.⁴⁴²

⁴⁴⁰ Also in *Jāmi’ at-Tirmidhī: The Book of Military Expeditions* (1580), *Musnad Aḥmad* (17056), and *al-Kubrā* by an-Nasā’ī (8732). Al-Albānī declared it *Ṣaḥīḥ* in his *Ṣaḥīḥ wa Ḍa’īf Abī Dāwūd* (2759)

⁴⁴¹ Refer to the English translation of al-Wāqidi’s *Futūḥ ash-Shām, The Islāmic Conquest of Syria* (pp.133-147), and Akram’s *Sword of Allāh: Khalid bin al-Waleed* (pp338-346). Antioch was the Byzantium name of present-day Antakya, southern Turkey, the northwestern-most limit of *Shām*

⁴⁴² *Sūrah al-Anfāl* (8:56&57)

And:

﴿قَاتِلُوهُمْ يُعَذِّبُهُمُ اللَّهُ بِأَيْدِيكُمْ وَيُخْزِيهِمْ وَيَنْصُرْكُمْ عَلَيْهِمْ
وَيَشْفِ صُدُورَ قَوْمٍ مُّؤْمِنِينَ ۖ وَيُذْهِبْ غَيْظَ﴾

Fight them; Allāh will punish them by your hands and will disgrace them and give you victory over them and satisfy the breasts [i.e., desires] of a believing people And remove the fury in their [i.e., the believers'] hearts. ⁴⁴³

As such, the Muslims are not required to give such people any advanced warning of the resumption of hostilities. Rather, they are encouraged to conceal this information from them as much as is possible as, “*Indeed warfare is deception.*” ⁴⁴⁴

This is evident in the actions of the Prophet ﷺ after Banū Bakr, the allies of the Quraysh, launched an attack against the Khuzā'ah tribe. He ﷺ not only considered Banū Bakr's actions a gross violation of the treaty conducted with the Quraysh at Ḥudaybiyyah less than two years before, but he dispatched a small unit of eight Companions led by Qatadah ibn Rib'ī رَضِيَ اللَّهُ عَنْهُ to head towards Baṭn Iḍam⁴⁴⁵ in order to deceive his enemies as to his true intentions.⁴⁴⁶ He ﷺ also implored his Lord to keep news of his true intentions a secret from the disbelievers, saying:

⁴⁴³ *Sūrah at-Tawbah* (9:14&15)

⁴⁴⁴ Referring to the narration collected in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (3030) wherein the Prophet ﷺ said:

الْحَرْبُ خَدْعَةٌ

“*Indeed warfare is deception.*”

⁴⁴⁵ It is located about 35 miles away from Madīnah, along the route to ash-Shām (i.e. the North, whereas Makkah lies south of Madīnah)

⁴⁴⁶ Refer to *The Sealed Nectar* (pp.389-391) and *The Noble Life of the Prophet ﷺ* (3/1682)

اللَّهُمَّ خُذْ عَلَى أَسْمَاعِهِمْ وَأَبْصَارِهِمْ فَلَا يَرَوُنَا إِلَّا بَغْتَةً وَلَا يَسْمَعُونَا إِلَّا فَجْأَةً

“O Allāh, take away their hearing and sight, so that they do not see us and they do not hear us until we surprise them (in their midst).” ⁴⁴⁷

Indeed, Allāh ﷻ also aided him in his quest to impose a news blackout regarding his impending attack upon Makkah by revealing news of Ḥātib’s رَضِيَ اللَّهُ عَنْهُ attempt to inform the Quraysh of their impending fate. ⁴⁴⁸

Futher examples are evident in the way the Prophet ﷺ dealt with ibn al-Ashraf and Banū Quraydhah, who both violated the terms of their treaties with the Muslims. Both were attacked without warning after their treachery had become evident.

Speaking about the Conquest of Makkah, ibn Qayyim رَحِمَهُ اللَّهُ says in *Zād al-Ma’ād* (2/208), “Included in the matters relating to *Fiqh* which may be derived from this incident are: That if those who have a covenant with the Muslims make war on those who are under the protection of the Muslim leader, they will be in a state of war with him and he may attack them in their homes at night without informing them (they are no longer protected by treaty). He is only required to inform them if he fears betrayal on

⁴⁴⁷ *Al-Bidāyah wa’n-Nihāyah* (4/474). Ibn Qayyim narrates a slightly different wording from ibn Hishām in *Zād al-Ma’ād* (2/194):

اللَّهُمَّ خُذِ الْعُيُونَ وَالْأَخْبَارَ عَنْ قُرَيْشٍ حَتَّى نَبْعَثَهَا فِي بِلَادِهَا

“O Allāh, take away their eyes and prevent information from reaching the Quraysh until we come upon them suddenly in their land.”

In his *Tafsīr* on the verse (8:58), al-Qurtubī relates the wording:

اللَّهُمَّ اقْطَعْ خَبْرَ عَنْهُمْ

“O Allāh, prevent any news from reaching them.”

⁴⁴⁸ This incident is mentioned on pp.426-428

their part. However if the betrayal is confirmed, they have nullified their treaty and there is no need to inform them.”⁴⁴⁹

While the **third** method, as mentioned by ibn Qayyim, is for the Muslims to announce the nullification of the treaty to the disbelievers. However, this is only permissible in specific circumstances. Allāh ﷻ commands the believers in *Sūrah at-Tawbah* (9:7):

﴿فَمَا اسْتَقَمُّوْا لَكُمْ فَاسْتَقِمْوْا لَهُمْ اِنَّ اِلَهَآءَ يُحِبُّ
الْمُتَّقِیْنَ﴾

So as long as they are upright toward you, be upright toward them.

Therefore, the believers are duty-bound to remain faithful to the terms of any treaty of covenant they have with the disbelievers, as long as the latter do not violate any of the agreed upon terms. Nevertheless, Allāh ﷻ mentions the exception to this rule, stating in *Sūrah al-Anfāl* (8:58):

﴿وَاِمَّا تَخَافُ مِنْ قَوْمٍ خِيَا۟نَةً فَانۢبِذْ اِلَيْهِمْ عَلٰٓى سَوَآءٍ اِنَّ اِلَهَآءَ لَا
يُحِبُّ الْخَآئِنِیْنَ﴾

If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms. Indeed, Allāh does not like traitors.

In his *Tafsīr* (4/391), al-Qurṭubī quotes ibn al-‘Arabī رَحِمَهُمُ اللّٰهُ as saying, “If the traces of treachery become apparent and are confirmed with evidence, it is *Wājib* (obligatory) to dissolve the treaty (after having notified the enemy).”

⁴⁴⁹ Also in *Provisions for the Hereafter (Abridged)*, (p.396)

Al-Baghawī رحمه الله comments in his *Tafsīr* (p.532) that the verse means, “What becomes apparent to you from the signs of treachery.”

As-Sa’dī رحمه الله says in his *Tafsīr* (p.301), “If you perceive treachery from them due to its accompanying actions, that while implicit, nevertheless indicate treachery on their part, notify them of the termination of their treaty.”

Aṭ-Ṭabarī رحمه الله remarks in his *Tafsīr* (5/758), “If the indicators of treachery become apparent from your enemy, (even) if the (actual treachery) is hidden from you.”

Aṭ-Ṭarīfī - may Allāh keep him steadfast - said in his *Tafsīr* (3/1421) concerning the types of disbelievers with regards to their adherence to the terms of their treaties, “The second type who it is permissible to inform of the discontinuity of their treaty, are those who exhibit the initial stages of treachery. Alternatively, the Muslims are informed by their spies that they are making preparations and are awaiting a misfortune befall the believers (so they may capitalise on it). It is not however permissible to attack them whilst they are unaware and the treaty remains intact. Rather, they should be notified of the nullification of the treaty; and this is apparent in Allāh’s words: ***If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms. Indeed, Allāh does not like traitors.*** After this, the Muslims are free to fight or raid them, night or day, even if they unaware (of the impending attack) as long as they have been notified of the cessation of their treaty. (In such a situation), they are not protected, neither is there any sin associated with capturing them whilst they are unaware and heedless.”

As such, this ***fear*** is not an unfounded suspicion or doubt, as ‘certainty is not removed by doubt.’⁴⁵⁰ Rather, it is supported

⁴⁵⁰ In Arabic this principle is termed (لا يزال اليقين بشك)

with evidence and indicators of the disbelievers intended betrayl. Such as when the Prophet ﷺ expelled the Jewish tribe of Banī an-Nadīr after Jibrīl عليه السلام informed him of their plot to assassinate him. At that time, he ﷺ gave them warning of their impending expulsion due to their violation of the treaty they had previously enjoyed.

Contemporary manifestations of this may take the form of the disbelievers making preparations for offensive operations. Such as aggressive reconnasaince, amassing of troops, weapons and equipment close to the front lines; dismantling of sections of their defences and de-mining certain areas (in order to make way for the forward passage of their tanks, military vehicles and infantry); shifting of non-military personel away from the front lines, and the shaping of public opinion in favour of conflict. Even though these things, in and of themselves, may not constitute outright treaty violations, they are all indicators of treacherous intent. Consequently, the believers are duty bound to notify their enemy's of the cancellation of their treaty and the resumption of war between them, in order to free themselves from any perceived treachery, as *Allāh does not like traitors*.

CHAPTER SUMMARY

There are four types of security covenants contracted with the disbelievers, all being binding upon the believers to uphold, if ratified. They are:

- 1) The contract of *Dhimmah*
- 2) The ‘*Ahd*, or *Ṣulḥ*
- 3) The security of *Jiwār*
- 4) *Amān*: Covenant of security

These contracts all serve to protect the ordinarily permissible blood, wealth, and the honour of the disbelievers throughout their duration, and may be issued both verbally and non-verbally.

As long as the disbelievers uphold the covenant’s terms, the Muslims are duty-bound to refrain from committing any excesses against their signatories.

The covenant of security can be issued to individual, or small groups of disbelievers, by free, sane, and adult Muslims. The majority of scholars hold the covenant issued by the free, sane, and adult Muslim woman binding, while rejecting the minor’s covenant. Although, any covenant that harms the Muslims is invalid, such as that issued to the enemy spy, according to the words of the Messenger ﷺ:

لَا ضَرَرَ وَلَا ضِرَارَ

“There is no harming, nor reciprocating of harm.”

For larger groups of disbelievers, the leader or one of his representatives are the only individuals authorised to enact such covenants.

If treachery is ascertained on the part of the disbelievers, the believers are not required, and should not notify them of the termination of the treaty; rather they can attack them immediately and without warning. If there is no conclusive proof of treachery, however its indicators are present, the Muslims are required to notify the disbelievers of the dissolution of the treaty before they are permitted to resume hostilities.

The Disbelievers fall into three categories with regards to covenants and treaties:

- 1) Those it is *Wājib* to grant safety under normal circumstances, such as those interested in learning about Islām.
- 2) Those with whom it is permissible to conduct treaties.
- 3) Those whom Allāh has forbidden the believers from conducting any treaties with, such as the treacherous and those guilty of cursing, defaming, and slandering Allāh ﷻ, His Messenger ﷺ, and/or Islām.

The termination of the treaty or covenant takes place in a number of ways:

- 1) The treaty's term has expired. Alternatively, the disbeliever(s), in the case of covenants of *Jiwār*, have been escorted safely out of the Muslims' territory and back to their places of safety.
- 2) The disbelievers violate the terms of the treaty or covenant.
- 3) The believers suspect treachery on the part of the disbelievers, and thus are required to terminate the treaty after notifying the latter of the treaty's termination.

Aside from these instances, it is not permissible for the Muslims to break, terminate, or nullify their treaties and covenants they have conducted with the disbelievers. Rather, it is *Wājib* upon the Muslims to remain faithful in upholding their terms and conditions.

CHAPTER 20

ردّ شبهة: القصة أبي جندل وأبي بصير

RESPONDING TO A MISCONCEPTION: THE INCIDENTS OF ABŪ JANDAL AND ABŪ BAṢĪR رَضِيَ اللَّهُ عَنْهُمَا

Due to a number of factors, the misconception promoting the permissibility of handing over Muslims, and in particular *Mujāhidīn*, to the disbelievers has afflicted many Muslims. The treaty of Ḥudaybiyyah and the ensuing incidents of Abū Jandal and Abū Baṣīr رَضِيَ اللَّهُ عَنْهُمَا are often cited as evidence in support of this erroneous claim.

Muslim رَحِمَهُ اللَّهُ narrates in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (1784) from Anas رَضِيَ اللَّهُ عَنْهُ:

أَنَّ قُرَيْشًا صَالَحُوا النَّبِيَّ ﷺ فِيهِمْ سُهَيْلُ بْنُ عَمْرٍو، فَقَالَ النَّبِيُّ ﷺ لِعَلِيٍّ: «اكَتُبْ، بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ»، قَالَ سُهَيْلٌ: أَمَّا بِاسْمِ اللَّهِ، فَمَا نَدْرِي مَا بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ، وَلَكِنْ اكَتُبْ مَا نَعْرِفُ بِاسْمِكَ اللَّهُمَّ، فَقَالَ: «اكَتُبْ مِنْ مُحَمَّدٍ رَسُولِ اللَّهِ»، قَالُوا: لَوْ عَلِمْنَا أَنَّكَ

رَسُولُ اللَّهِ لَا تَبْعُنَاكَ، وَلَكِنْ اكْتُبِ اسْمَكَ وَاسْمَ أَبِيكَ، فَقَالَ النَّبِيُّ ﷺ: «اَكْتُبْ مِنْ مُحَمَّدٍ بْنِ عَبْدِ اللَّهِ»، فَاشْتَرَطُوا عَلَى النَّبِيِّ ﷺ أَنْ مَنْ جَاءَ مِنْكُمْ لَمْ نَزِدْهُ عَلَيْكُمْ، وَمَنْ جَاءَ كُمْ مِنَّا رَدَدْتُمُوهُ عَلَيْنَا

The Quraish conducted a peace treaty with the Prophet ﷺ. Among them was Suhayl ibn 'Amr. The Prophet ﷺ said to 'Alī, "Write, 'In the name of Allāh, most Gracious and most Merciful.'" Suhayl said, "As for 'Bismillāh,' we do not know what is meant by 'Bismillāhir-Raḥmānir-Raḥīm' (In the name of Allāh most Gracious and most Merciful). But write what we understand, i.e. 'Bismikallāhumma' (in thy name O Allāh)." Then, the Prophet ﷺ said, "Write, 'From Muḥammad, the Messenger of Allāh.'" They said, "If we knew that you were the Messenger of Allāh, we would indeed have followed you. Therefore, write your name and the name of your father." So the Prophet ﷺ said, "Write, 'From Muhammad ibn 'Abdullāh.'" They laid the condition on the Prophet ﷺ that anyone who joined them from the Muslims, the Makkans would not return him, and anyone who joined you (i.e. the Muslims) from them, you would send him back to them (i.e. to the Quraysh).

The stories of both Abū Jandal and Abū Baṣīr رضي الله عنه are included as part of a long narration in *Ṣaḥīḥ al-Bukhārī: The Book of Conditions* (2731&2732); excerpts of which will follow through the chapter as necessary.

A number of scholars have refuted this erroneous claim, such as what ibn Qayyim رحمه الله said in *Zād al-Ma'ād* (2/22): "Abū Dāwūd said, 'during the period the condition'⁴⁵¹ was present that

⁴⁵¹ It was originally stipulated as part of the Treaty of Ḥudaybiyyah that the Messenger of Allāh ﷺ would return anyone that fled to him from Makkah. However the Makkans were not required to return anyone that came to them from Madīnah. This clause was eventually revoked, at the request of the Quraysh after Abū Baṣīr and his companions رضي الله عنه conducted a relentless guerrilla campaign against the Quraysh and their economic interests from their

the Messenger of Allāh ﷺ would return (to the Quraysh) anyone that came (to him) from them, even if they were Muslim. As for today, this is not correct (i.e. it is not permissible).”

Ibn Qayyim also says (2/23), “It is not permissible to return the Muslim woman who migrates from the disbelievers back to them, even if they have an agreement stipulating that.”

The evidence for this is Allāh’s ﷻ statement in *Sūrah al-Mumtaḥinah* (60:10), wherein He says:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ ۚ إِنَّهُنَّ أَعْلَمُ
بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ ۚ﴾

O you who have believed, when the believing women come to you as emigrants, examine [i.e., test] them. Allāh is most knowing as to their faith. And if you know them to be believers, then do not return them to the disbelievers

Consequently, anyone attempting to justify the returning or handing over of Muslim women to the disbelievers has disbelieved in the Book of Allāh, as the above verse is explicit in the prohibition of this criminal act.

As for the believing men, the Prophet ﷺ said:

المُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ

coastal base. Refer to *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1784) and *Musnad Aḥmad* (13410). Also refer to *Zād al-Ma’ād* (2/23), *Tafsīr ibn Kathīr: Commenatary of Sūrah al-Faṭḥ* (9/169)

“The Muslim is the brother of the Muslim; he does not oppress him, neither does he hand him over...”⁴⁵²

Regarding this narration, ibn Ḥajar رَحِمَهُ اللَّهُ says in *Fath al-Bārī* (5/97), “His ﷺ words ‘he does not oppress him’ [...] is an order, as the Muslim oppressing another Muslim is *Harām*. His words, ‘Neither does he hand him over,’ means that he does not leave him with someone or something that will harm him. Instead, he aids, supports, and defends him.”

Likewise, in *Ṣaḥīḥ Muslim: The Book of Tribulations* (2897) Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ narrates that the Prophet ﷺ said concerning the *Malḥamah*:

لَا تَقُومُ السَّاعَةُ حَتَّى يَنْزِلَ الرُّومُ بِالْأَعْمَاقِ أَوْ بِدَاقٍ، فَيَخْرُجُ إِلَيْهِمْ جَيْشٌ مِنَ الْمَدِينَةِ، مِنْ خِيَارِ أَهْلِ الْأَرْضِ يَوْمَئِذٍ، فَإِذَا تَصَافَوْا، قَالَتِ الرُّومُ: خَلُّوا بَيْنَنَا وَبَيْنَ الَّذِينَ سَبَّوْنَا نَقَاتِلَهُمْ، فَيَقُولُ الْمُسْلِمُونَ: لَا، وَاللَّهِ لَا نُحِلِّي بَيْنَكُمْ وَبَيْنَ إِخْوَانِنَا، فَيَقَاتِلُونَهُمْ، فَيَنْهَزُهُمْ ثُلُثٌ لَا يُتَوَّبُ اللَّهُ عَلَيْهِمْ أَبَدًا، وَيُقْتَلُ ثُلُثُهُمْ، أَفْضَلُ الشُّهَدَاءِ عِنْدَ اللَّهِ، وَيَفْتَحُ الثُّلُثُ، لَا يُفْتَنُونَ أَبَدًا فَيَفْتَحُونَ قُسْطَنْطِينَةَ،

“The Last Hour will not be established until the Romans descend upon al-A'māq or Dābiq.⁴⁵³ An army consisting of the best (soldiers) of the people of the earth at that time will come from al-Madīnah (to fight them). When they will arrange themselves in ranks, the Romans will say, ‘Do not stand between us and those who you took as prisoners from amongst us. Let us fight them;’ however the Muslims will reply, ‘No, by Allāh, we will never

⁴⁵² *Ṣaḥīḥ al-Bukhārī: The Book of Oppression* (2442), *Ṣaḥīḥ Muslim: The Book of Virtue, Enjoining Good Manners, and Joining the Ties of Kinship* (2580), *al-Jāmi' at-Tirmidhī: The Book of Legal Punishments* (1426), and *Sunan Abī Dāwūd: The Book of Manners* (4893)

⁴⁵³ Two areas in *ash-Shām*, situated in the vicinity of the northern countryside of the city of Aleppo

stand aside and leave you to fight our brothers,’ (due to the Roman prisoners embracing Islām whilst in captivity). They will then fight, and a third of the army whom Allāh will never forgive, will flee; a third, whom Allāh will regard as the best of martyrs, will be killed; and a third will be given victory, never again being put to trial, and these will be the conquerors of Constantinople.”

As such, the attitude of the believers is evident in their words to the disbelievers whom they had previously shared a covenant with, “By Allāh, we will never stand aside and leave you to fight our brothers!”

Al-Imām ibn Ḥazm al-Andalūsī رَحِمَهُ اللَّهُ concludes regarding the issue in *al-Muḥallā: Kitāb al-Jihād* (933):

If they mention the incident of the Messenger of Allāh ﷺ returning Abū Jandal to the polytheists, then it does not represent any proof for them from a number of angles:

Firstly, they do not mention that the Prophet ﷺ had not finalised the treaty between them when he returned him to them. **Secondly**, he ﷺ did not return him to them until Mukarraz ibn Ḥafṣ had guaranteed his safety (i.e. extended Abū Jandal رَضِيَ اللَّهُ عَنْهُ a covenant of security). **Thirdly**, Allāh had informed the Prophet ﷺ that He would shortly make a way out and escape for Abū Jandal. However, (in our times) we are in no position to know this. **Fourthly**, the (permission to enact such clauses in a treaty) was abrogated after the incident of Abī Jandal by the words of Allāh the Exalted:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ ۚ إِنَّهُنَّ عَلَّمْنَ بِدِينِكُمْ فَلَا تُرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ ۚ﴾

*O you who have believed, when the believing women come to you as emigrants, examine [i.e., test] them. Allāh is most knowing as to their faith. And if you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them.*⁴⁵⁴

Thus, Allāh ﷻ abolished with this verse the condition that they would return the (Muslim) women (to the disbelievers). Then Allāh the Exalted revealed (*Al-Barā'ah*) abolishing the treaty completely and abrogating this practice with His words:

﴿بَرَاءَةٌ مِّنَ اللَّهِ وَرَسُولِهِ إِلَى الَّذِينَ عَاهَدْتُم مِّنَ الْمُشْرِكِينَ ۖ فَسِيحُوا فِي الْأَرْضِ أَرْبَعَةَ أَشْهُرٍ وَاعْلَمُوا أَنَّكُمْ غَيْرُ مُعْجِزِي اللَّهِ وَأَنَّ اللَّهَ مُحْزِي الْكَافِرِينَ ۖ﴾

*[This is a declaration of] disassociation, from Allāh and His Messenger, to those with whom you had made a treaty among the polytheists. So travel freely, [O disbelievers], throughout the land [during] four months*⁴⁵⁵

And with His words in (*Al-Barā'ah*):

⁴⁵⁴ Sūrah al-Mumtahinah (60):10

⁴⁵⁵ Sūrah at-Tawbah (9):1&2

﴿كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ رَسُولِهِ إِلَّا الَّذِينَ
عَاهَدْتُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ﴾

How can there be for the polytheists a treaty in the sight of Allāh and with His Messenger, except for those with whom you made a treaty at al-Masjid al-Ḥarām? ⁴⁵⁶

Here, the Exalted abolished every treaty with the polytheists except for those whom made a treaty at *al-Masjid al-Ḥarām*. He also did the same with His words:

﴿فَإِذَا أُنْسِلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ
وَخُذُوهُمْ وَأَخْصِرُوهُمْ وَأَقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ إِن تَابُوا وَأَقَامُوا الصَّلَاةَ
وَأَتَوْا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ﴾

And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give Zakāh, let them [go] on their way. ⁴⁵⁷

And He, the Exalted, said:

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا
يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ

⁴⁵⁶ Sūrah at-Tawbah (9):7

⁴⁵⁷ Sūrah at-Tawbah (9):5

الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ
صَلْعُونَ ﴿٢٩﴾

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islām] from those who were given the Scripture - [fight] until they give the Jizyah willingly while they are humiliated.⁴⁵⁸

Thus, Allāh the Exalted abolished every treaty, leaving the polytheists no option other than to accept Islām or face death. While the option to pay the *Jizyah* in a state of humiliation is for the people of the Book exclusively. Those interested in learning about Islām and envoys were granted safety until they delivered their message, or heard the Words of Allāh (i.e. the Qur'ān) they would then be returned to their lands immediately. As such, every treaty aside from these is null and void, and not permissible to enact due to it being in opposition to the condition set by Allāh ﷻ and His command.

Via al-Bukhārī, it has been reported to us:

عَنْ الْمَسُورِ بْنِ مَخْرَمَةَ وَغَيْرِهِ فَذَكَرَ حَدِيثَ الْحُدَيْبِيَّةِ، وَفِيهِ فَقَالَ الْمُسْلِمُونَ: سُبْحَانَ اللَّهِ كَيْفَ يُرَدُّ إِلَى الْمُشْرِكِينَ وَقَدْ جَاءَ مُسْلِمًا؟ فَبَيْنَمَا هُمْ كَذَلِكَ إِذْ دَخَلَ أَبُو جَنْدَلٍ بْنُ سُهَيْلٍ بْنُ عَمْرِو يَرْسُفُ فِي قُبُورِهِ وَقَدْ خَرَجَ مِنْ أَسْفَلِ مَكَّةَ حَتَّى رَمَى بِنَفْسِهِ بَيْنَ أَظْهُرِ الْمُسْلِمِينَ فَقَالَ سُهَيْلٌ: هَذَا أَوَّلُ مَا أَقْضَيْكَ عَلَيْهِ أَنْ تَرُدَّهُ إِلَيَّ فَقَالَ النَّبِيُّ ﷺ: إِنَّا لَمْ نَقْضِ الْكِتَابَ بَعْدُ،

⁴⁵⁸ Sūrah at-Tawbah (9):29

قَالَ: فَوَاللَّهِ إِذَا لَا أَصَالِحُكَ عَلَى شَيْءٍ أَبَدًا، فَقَالَ لَهُ النَّبِيُّ ﷺ: فَأَجِزْهُ لِي قَالَ: مَا أَنَا بِمُجِيزِهِ لَكَ قَالَ: بَلَى فَاَفْعَلْ. قَالَ: مَا أَنَا بِفَاعِلٍ، قَالَ مُكَرَّرٌ - هُوَ ابْنُ حَفْصِ بْنِ الْأَخْنَفِ: بَلْ قَدْ أَجَزْنَاهُ لَكَ

The Muslims said, “Glorified be Allāh! How will such a person be returned to the pagans after he has become a Muslim?” While they were in this state Abū Jandal ibn Suhayl ibn ‘Amr came from the valley of Makkah staggering with his fetters and fell down amongst the Muslims. Suhayl said, “O Muḥammad! This is the very first term with which we make peace with you - you shall return Abū Jandal to me.” The Prophet said ﷺ, “*The peace treaty has not been written yet.*” Suhayl said, “I will never allow you to keep him.” The Prophet ﷺ said, “Yes, do.” He said, “I won’t do so.” Mukarraz said, “Rather, we will protect him for you.”⁴⁵⁹

Thus, this is in opposition to their speech (regarding the permissibility of handing Muslims over to the disbelievers), and the *Ḥadīth* of Abī Jandal is a proof against them as we have narrated. Additionally, Muslim reports from Anas:

أَنَّ قُرَيْشًا صَالَحُوا النَّبِيَّ ﷺ فَاشْتَرَطُوا عَلَى النَّبِيِّ ﷺ: أَنَّ مَنْ جَاءَ مِنْكُمْ لَمْ نَرُدَّهُ عَلَيْكُمْ وَمَنْ جَاءَ مِنَّا رَدَدْنَاهُ عَلَيْكُمْ. فَقَالُوا يَا رَسُولَ اللَّهِ أَتَكْتُبُ هَذَا؟ قَالَ: نَعَمْ، إِنَّهُ مَنْ ذَهَبَ مِنَّا إِلَيْهِمْ فَأَبْعَدَهُ اللَّهُ، وَمِنْ جَاءَنَا مِنْهُمْ فَسَيَجْعَلُ اللَّهُ لَهُ فَرْجًا وَمَخْرَجًا

⁴⁵⁹ Ṣaḥīḥ al-Bukhārī: The Book of Conditions (2731,2732&2733)

They laid the condition on the Prophet ﷺ that anyone who joined them from the Muslims, the Makkans would not return him, and anyone who joined you (the Muslims) from them, you would send him back to them. The Companions said, “O Messenger of Allāh, should we write this?” He said, “Yes. *One who goes away from us to join them - may Allāh keep him away! While one who comes to join us from them (and is sent back) Allāh will provide him relief and a way of escape.*”⁴⁶⁰

And this is information from him عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ stamped with his seal of truthfulness. Al-Bukhārī also reports from a number of Companions of the Prophet ﷺ:

حَدِيثَ الْحَدِيثِ، وَفِيهِ: فَرَدَّ يَوْمَئِذٍ أَبَا جَنْدَلٍ إِلَى أَبِيهِ سُهَيْلِ بْنِ عَمْرٍو، وَلَمْ يَأْتِهِ أَحَدٌ مِنَ الرِّجَالِ إِلَّا رَدَّهُ فِي تِلْكَ الْمُدَّةِ وَإِنْ كَانَ مُسْلِمًا، وَجَاءَتْ الْمُؤْمِنَاتُ مَهَاجِرَاتٍ، وَجَاءَتْ أُمُّ كُثُومُ بِنْتُ عُقْبَةَ بْنِ أَبِي مُعَيْطٍ مِمَّنْ خَرَجَ إِلَى رَسُولِ اللَّهِ ﷺ يَوْمَئِذٍ وَهِيَ عَاتِقٌ فَجَاءَ أَهْلُهَا يَسْأَلُونَ النَّبِيَّ ﷺ أَنْ يُرْجِعَهَا إِلَيْهِمْ فَلَمْ يُرْجِعْهَا إِلَيْهِمْ لِمَا أَنْزَلَ اللَّهُ تَعَالَى فِيهِمْ: ﴿إِذَا جَاءَكُمْ الْمُؤْمِنَاتُ مَهَاجِرَاتٍ فَاْمْتَحِنُوهُنَّ﴾ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ [المتحنة: 10]

The Prophet ﷺ agreed to that condition and returned Abū Jandal to his father Suhayl ibn ‘Amr. Henceforward the Prophet ﷺ returned everyone in that period (of truce) even if he was a Muslim. During that period some believing women emigrants including Umm Kulthum bint ‘Uqbah bin Abū Mu’īṭ, who came to the Messenger of Allāh as a young woman. Her family came to the Prophet ﷺ asking him to return her, but the Prophet ﷺ did not return her to them for Allāh had revealed the following

⁴⁶⁰ *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1784)

verse regarding women: *O you who have believed, when the believing women come to you as emigrants, examine [i.e., test] them. Allāh is most knowing as to their faith. And if you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them.*⁴⁶¹

[End of ibn Ḥazm quote]

Allāh ﷻ confirmed the Prophet's words ﷺ, “While one who comes to join us from them (and is sent back) Allāh will provide him relief and a way of escape.”⁴⁶² Al-Bukhārī رَضِيَ اللَّهُ عَنْهُ narrated in his *Ṣaḥīḥ: The Book of Conditions* (2732) from al-Miswar ibn Makhramah and Marwān regarding the story of Abū Baṣīr, Abū Jandal, and the other Muslims رَضِيَ اللَّهُ عَنْهُمْ who wished to leave Makkah during the period of the treaty:

فَخَرَجَ حَتَّى أَتَى سَيْفَ الْبَحْرِ قَالَ: وَيَنْفَلْتُ مِنْهُمْ أَبُو جَنْدَلُ بْنُ سُهَيْلٍ، فَلَحِقَ بِأَبِي بَصِيرٍ، فَجَعَلَ لَا يَخْرُجُ مِنْ قُرَيْشٍ رَجُلٌ قَدْ أَسْلَمَ إِلَّا لَحِقَ بِأَبِي بَصِيرٍ، حَتَّى اجْتَمَعَتْ مِنْهُمْ عَصَابَةٌ، فَوَاللَّهِ مَا يَسْمَعُونَ بِعِيرٍ خَرَجَتْ لِقُرَيْشٍ إِلَى الشَّامِ إِلَّا اعْتَرَضُوا لَهَا، فَفَتَلَوْهُمْ وَأَخَذُوا أَمْوَالَهُمْ، فَأَرْسَلَتْ قُرَيْشٌ إِلَى النَّبِيِّ ﷺ تُنَاشِدُهُ بِاللَّهِ وَالرَّحِمِ، لَمَّا أُرْسِلَ، فَمَنْ أَنَاهُ فَهُوَ آمِنٌ، فَأَرْسَلَ النَّبِيُّ ﷺ إِلَيْهِمْ

“So he (i.e. Abū Baṣīr) set off till he reached the seashore. Abū Jandal bin Suhayl got himself released from them (i.e. infidels) and joined Abū Baṣīr. Therefore, whenever a man from Quraysh

⁴⁶¹ *Ṣaḥīḥ al-Bukhārī: The Book of Conditions* (2712). *Al-Muḥallā* (5/361-363)

⁴⁶² Indeed, Allāh ﷻ says about him ﷺ in *Sūrah an-Najm* (53:2-4):

﴿مَا ضَلَّ صَاحِبُكُمْ وَمَا غَوَىٰ ۚ وَمَا يَنْطِقُ عَنِ الْهَوَىٰ ۚ إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ ۚ﴾

Your companion [i.e., Muḥammad] has not strayed, nor has he erred, Nor does he speak from [his own] inclination. It is not but a revelation revealed.

embraced Islām he would follow Abū Baṣīr until they formed a strong group. By Allāh, whenever they heard about a caravan of Quraysh heading towards ash-Shām, they stopped it, attacked, killed them (i.e. the infidels), and took their property. The people of Quraysh sent a message to the Prophet ﷺ requesting him for the sake of Allāh and kith and kin to send for (i.e. Abū Baṣīr and his companions), promising that whoever (amongst them) came to the Prophet ﷺ would be secure. Thus, the Prophet ﷺ sent for them (i.e. Abū Baṣīr's companions)."

Who from amongst the believers today can claim such a promise from Allāh, warranting him handing believers over to the disbelievers? If one were to make such a claim, it would not be unreasonable to suspect him of disbelief, and should be called upon to repent for such transgression. Due to his claim of receiving revelation and possessing knowledge of the unseen not found in the Qur'ān or the *Sunnah*, after Allāh has informed the believers:

﴿عَلَّمَ الْغَيْبِ فَلَا يُظْهِرُ عَلَى غَيْبِهِ أَحَدًا﴾

[He is] Knower of the unseen, and He does not disclose His [knowledge of the] unseen to anyone⁴⁶³

In conclusion, aside from the relatively few scholars who excercised their *Ijtihad* and erred, having earned one reward, the majority of people today promoting the idea of handing Muslims to the disbelievers fall into one of two groups. Those steeped in

⁴⁶³ *Sūrah al-Jinn* (72):26

Shaykh Muḥammad ibn ‘Abd al-Wahhāb رحمه الله wrote in *The Three Fundamental Principles*, “The *Ṭawāghūt* are numerous, (however) their heads are five: [...] the one who claims knowledge of the unseen...” Shaykh al-’Uthaymīn رحمه الله says in his commentary on the above statement, “The hidden and unseen of the future is something absolute and not known to anyone besides Allāh alone. Therefore, whoever claims such knowledge is a disbeliever, for he has denied what Allāh, the Mighty and Majestic, and His Messenger ﷺ said.” (*Sharḥ Thalāthah al-Uṣūl*, pgs.153&154)

Nifāq, concealing their hatred that Islām be victorious, and their love that the disbelievers have the upper hand over the believers. Similar to those whom Allāh described with His words:

﴿يَأْمُرُونَ بِالْمُنْكَرِ وَيَنْهَوْنَ عَنِ الْمَعْرُوفِ وَيَقْبِضُونَ
أَيْدِيَهُمْ نَسُوا اللَّهَ فَنَسِيَهُمْ﴾

They enjoin what is wrong and forbid what is right and close their hands [i.e. do not spend their wealth for Jihād]. They have forgotten Allāh, so He has forgotten them [accordingly].⁴⁶⁴

While the second group are those blinded by the disease of *Irjā'*, and have been misled by the poison words emanating from the mouths of the silver-tongued evil scholars and preachers. They are akin to compass that has had a magnet placed beneath it, and as such it can no longer distinguish north from south, or east from west. Likewise, they are incapable of making a distinction between good and evil, truth and falsehood, and alliance and disavowal (*al-Walā wa 'l-Barā*). As a result, they have extended their alliance to those deserving of their enmity, and extended their enmity towards deserving their love, support, and alliance. As a result, straying precariously close to the disbelief Allāh ﷻ points to in His noble verse in *Sūrah al-Mujādilah* (58:22):

﴿لَا تَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ
وَرَسُولَهُ وَلَوْ كَانُوا آبَاءَهُمْ أَوْ أَبْنَاءَهُمْ أَوْ إِخْوَانَهُمْ أَوْ
عَشِيرَتَهُمْ﴾

You will not find a people who believe in Allāh and the Last Day having affection for those who oppose

⁴⁶⁴ *Sūrah at-Tawbah* (9):67

Allāh and His Messenger, even if they were their fathers or their sons or their brothers or their kindred.

And we ask Allāh to guide all the sincere believers.

CHAPTER SUMMARY

Despite the Prophet ﷺ consenting in the treaty of Ḥudaybiyyah to a clause requiring him to hand back to the Quraysh any Muslim who came to him from Makkah, Allāh ﷻ later abrogated this clause with regards to the believing women by His noble words:

﴿فَإِنْ عَامَتْهُنَّ مُؤْمِنَاتٌ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ ۚ﴾

If you know them to be believers, then do not return them to the disbelievers.⁴⁶⁵

Scholars likewise hold that after this incident, it is not permissible either to hand believing men over to the disbelievers even if such a treaty exists between them. While if no such treaty exists; it is undoubtably *Ḥarām* and a major act of treachery.

In addition, it is also evident from the incident that Muslims not bound under the terms of such treaties are not required to abide by their terms, such as was the case with the noble Companions; Abū Baṣīr, Abū Jandal, and the rest of their group رَضِيَ اللَّهُ عَنْهُمْ.

⁴⁶⁵ *Sūrah al-Mumtaḥinah* (60):10

CHAPTER 21

التأشيرة والأمان

THE VISA AND ITS RELATIONSHIP WITH THE COVENANT OF SECURITY

The Visa, and its relationship to the covenant of security (*Amān*), is a relatively contemporary issue. It is not referred to directly in the Qur'ān, *Sunnah*, *Ijmā'* or in the opinions of the early scholars. Thus, its ruling falls squarely within the realms of *Ijtihād*; with the believer being obliged to adopt whichever opinion regarding it he finds to be closest to the truth, and reject any that opposes the clear and unambiguous texts of the *Sharī'ah*.

تعريف التأشيرة

DEFINITION OF THE VISA

According to [Passport Index](#), "A visa is an official document that allows the bearer to legally enter a foreign country. The visa is

usually stamped or glued into the bearer's passport. There are several different types of visas, each of which afford the bearer different rights in the host country."

On the US Department of State - Bureau of Consular Affairs [website](#), they define a US Visa as follows: "A citizen of a foreign country who seeks to enter the United States generally must first obtain a U.S. visa, which is placed in the traveler's passport, a travel document issued by the traveler's country of citizenship.

Certain international travellers may be eligible to travel to the United States without a visa if they meet the requirements of visa-free travel." "

According to the Oxford Advanced Learner's Dictionary (p.1705) a Visa is, "A stamp or mark put in your passport by officials of a foreign country that gives you permission to enter, pass through or leave their country."

The Cambridge Dictionary defines the Visa as, "An official mark, usually made in a passport, which allows you to enter or leave a particular country."

حكم التأشيرة

THE ISLAMIC RULING REGARDING THE VISA

A number of contemporary scholars hold the Visa equivalent to the Islamic covenant of security (*Amān*). As such, the Visa holder that assaults the nation that has issued the Visa or her population has indeed committed the (major) sin of treachery by breaching his covenant with the disbelievers, according to this opinion.

Naturally, such a prospect holds major implications for the sincere *Mujāhid*, who fights so that Allāh's laws are upheld and sanctified. As he knows this means, if this is truly the case, an end to *Jihād* in the lands of the enemies of Allāh. As the *Mujāhidīn* are presently incapable of engaging in full-scale conventional warfare, neither would it be strategically advantageous even if they did possess such a capability. Consequently, the implications of such a ruling would effectively tie the hands of the believers; drastically restricting their freedom of movement as far as delivering strategic blows to their enemies is concerned. Alternatively, they run the risk of turning a blind eye to the rulings of the *Sharī'ah*, and instead following their desires. However, Allāh ﷻ warns the believers from being amongst those who hold others to a higher standard than they hold themselves to, asking:

﴿*أَتَأْمُرُونَ النَّاسَ بِالْبِرِّ وَتَنسَوْنَ أَنْفُسَكُمْ وَأَنْتُمْ لَا تَعْلَمُونَ﴾
 ﴿الْكِتَابَ أَفَلَا تَعْقِلُونَ﴾

Do you order righteousness of the people and forget yourselves while you recite the Scripture? Then will you not reason?⁴⁶⁶

He ﷻ likewise says in *Sūrah aṣ-Ṣaff* (61:2&3):

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لِمَ تَقُولُونَ مَا لَا تَفْعَلُونَ ۚ كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لَا تَفْعَلُونَ﴾

O you who have believed, why do you say what you do not do? Great is hatred in the sight of Allāh that you say what you do not do.⁴⁶⁷

⁴⁶⁶ *Sūrah al-Baqarah* (2):44

⁴⁶⁷ *Sūrah aṣ-Ṣaff* (61):2&3

They would also risk running foul of the severe prohibition and punishment regarding treachery.

On the other hand, if the *Mujāhidīn* are able to discretely infiltrate, or enter the territory of the enemy by force, without having recourse to passports, travel documents, Visas, and the like, then the issue at hand is of no concern.

However, for targets only possible for the *Mujāhidīn* to reach via the use of commercial airlines, seaports, and the like - methods that require the use of travel documents accompanied by Visas; the issue of the Visa and its relationship to the covenant of security poses an important question indeed.

In beginning the discussion on the subject, those scholars that contend the Visa does indeed constitute, and is a contemporary extension of the covenant of security, rely on the principles of *Fiqh*:

المَعْرُوفُ عُرْفًا كَالْمَشْرُوطِ شَرْطًا

‘What is understood customarily is the same as the stipulated condition.’

And:

الْعَادَةُ مُحَكَّمَةٌ

‘That which is customary is binding.’ Meaning in the absence a *Shar’ī* definition for a particular obligation, the prevailing custom(s) of the society become binding upon the *Mukallaf*.⁴⁶⁸

⁴⁶⁸ Examples of where this principle would be applied, can be found in Allāh’s commands (4:36):

As such, the *Sharī'ah* takes into account different societies customary practices and rules, granted they do not oppose the *Sharī'ah*, and holds them in the same regard as explicit written or verbal conditions. For example, in most customs it is understood that if a customer walks into a shop picks up an item, puts money equivalent to its value on the counter, and walks out in full view of the shopkeeper. It is treated in the same way as if he had verbally conversed with the shop keeper stating, 'I want to buy such and such item, and here is its price,' and then the shop keeper responds, 'I agree,' and thus the transaction is concluded. According to the above-mentioned principles, both transactions are legitimate and legally binding according to the *Sharī'ah*.

In line with this, a number of contemporary scholars hold that in spite of it not being explicitly stated, a country's issuing of a Visa customarily equates with their granting the visitor a temporary covenant of security. A covenant that the visitor is expected to reciprocate by not harming the country or their citizens in any way. This argument does hold weight and is theoretically in accordance with the principles of the *Sharī'ah*.

﴿وَعَبُدُوا اللَّهَ وَلَا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَنًا وَبِذِي الْقُرْبَىٰ
وَالْيَتَامَىٰ وَالْمَسْكِينِ وَالْجَارِ ذِي الْقُرْبَىٰ وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ بِالْجَنبِ وَابْنِ
السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ﴾

*Worship Allāh and associate nothing with Him, and to parents **do good**, and to relatives, orphans, the needy, the near neighbor, the neighbor farther away, the companion at your side, the traveler, and those whom your right hands possess.*

And (4:19):

﴿وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ﴾

*And live with them in **kindness**.*

In these noble verses Allāh ﷻ orders *Ihsān* (doing good) to the parents, etc. and living with ones spouse(s) according to that which is *Ma'rūf*, but does not specify exactly what these things entail. Consequently, that which is customarily **good** and **kind**, is what is ordered in these verses, as long as it does not contradict the *Sharī'ah*

However, in practise, it does not hold true in the majority of cases for several reasons, and Allāh ﷻ knows best.

Concerning the covenant of security, the majority of the classical scholars held it to be reciprocal, meaning that if one party gives a covenant of security to the other, and it is accepted, both parties are bound to withhold their hands from the other for the duration of the covenant. As such, *Imām ash-Shāfi'ī* رحمه الله ruled, “If (the Muslim) has a covenant of security from them, then they likewise have a covenant from him.”⁴⁶⁹ However, with regards to the contemporary Visa, the host nation rarely, if ever, extends their covenant of security to the visa holder. Owing to this, it can be argued that the majority of Visa issuing nations do not hold the Visa equivalent to the covenant of security.

This argument manifests itself in a number of ways: ⁴⁷⁰

1) The Believer is not safe with regards to his self:

The mandatory treatment afforded by the covenant of security is not afforded to the Muslim, despite him possessing a valid Visa. If the host nation or any other of her allies requests the arrest and/or extradition of the believer, they will be summarily detained and handed over. Whereas the covenant of security requires in such instances that, at the very least, the individual or group granted security are conveyed to their place of safety. Regarding this, Allāh ﷻ orders in *Sūrah at-Tawbah* (9:6):

﴿ثُمَّ أَدِلُّهُ إِلَى مَأْمَنِهِ﴾

Then deliver him to his place of safety.

⁴⁶⁹ *Al-Umm* (4/284). Also refer to the words of the scholars on (pgs.347&348)

⁴⁷⁰ It must be remembered that this is speaking in a general sense and applies in the majority of cases, however it does not negate that there may exist countries that treat the Visa as a covenant of security and do not break such covenants

This does not mean to arrest or surrender to their so they imprison, torture, and kill, as mentioned by at-Ṭarīfī in his *Tafsīr* (3/1469). Al-Baghawī رحمه الله says in his *Tafsīr* (p.541) regarding the *place of safety*, “It is the place wherein he is safe - the land of his people.”

The accounts of (extraordinary) rendition⁴⁷¹ and other examples of this kind of flagrant disregard for *Shar'ī* and customary covenants of security are too many to mention. Consequently, it is taken for granted that the Visa or passport will not prevent unwarranted detention or arrest at any international air, land, and seaport if the holder's name is flagged up on Interpol, Europol, or any other law-enforcement/security agencies' watch lists or databases. Thus, the Muslim to be returned to his place of safety upon being stopped at an air, land, or seaport, even if he possess a valid Visa, is so obvious that the question does not even cross the mind of the detainee!

2) The Believer is not safe with regards to his family:

Muslims the world over and especially those in the West, are painfully aware that, on a near-daily basis, their religious freedoms are being increasingly curtailed. So-called ‘freedoms’ the West would have everyone believe are the sole reason they are targeted by the ‘extremists,’ are no longer granted to Muslims as a matter of course. For example, the *Niqāb* - an

⁴⁷¹ According to Horowitz and Cammarano (2013), “After the attacks against the United States of September 11, 2001, the Central Intelligence Agency conspired with dozens of governments to build a secret extraordinary rendition and detention program that spanned the globe. Extraordinary rendition is the transfer - without legal process - of a detainee to the custody of a foreign government for purposes of detention and interrogation.

The program was intended to protect America. But, as described in the *Open Society Justice Initiative's* report, “It stripped people of their most basic rights, facilitated gruesome forms of torture, at times captured the wrong people, and debased the United States' human rights reputation world-wide.” (20 *Extraordinary Facts about CIA Extraordinary Rendition and Secret Detention*, (5/2/2013) Open Society Foundations)

obligation according to the majority of scholars from the four schools and other than them, is in the process of being outlawed in an increasing number of European countries. While, in countries such as France - once labeled the ‘beacon of western freedom,’ modest and chaste believing women risk arrest and/or fine if they refuse to uncover themselves in public in conformity with western ‘freedoms’. ⁴⁷²

Muslim parents also now find themselves increasingly impotent to enforce basic Islamic tenets; such as the prayer, *Hijāb*, and the *Wālī*’s right to reject unsuitable suitors, upon their offspring. Failure to adhere to these intrusive anti-Islāmic laws, quickly results in Muslim Parents being placed under investigation for extremism. This potentially results in them losing custody over their children, who in turn, may be handed to foster families to be raised as disbelievers. Parents also now fear teaching their children basic Islāmic morals and beliefs, such as the prohibition of fornication, homosexuality, and celebrating pagan and polytheistic festivals and celebrations, lest they run foul of counter-extremism legislation such as the infamous *Prevent* strategy. ⁴⁷³

⁴⁷² Refer to the following articles for examples of such western freedoms: Click [here](#) and [here](#). **Warning:** articles include images of partially covered women

⁴⁷³ According to the Home Office ([GOV.UK](#)), “The Prevent strategy, published by the Government in 2011, is part of our overall counter-terrorism strategy, *CONTEST*. The aim of the Prevent strategy is to reduce the threat to the UK from terrorism by stopping people becoming terrorists or supporting terrorism. In the Act this has been expressed as the need to ‘prevent people from being drawn into terrorism’.

The 2011 Prevent strategy has three specific strategic objectives:

- respond to the ideological challenge of terrorism and the threat we face from those who promote it.
- prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support.
- work with sectors and institutions where there are risks of radicalisation that we need to address...

3) The Believer is not safe with regards to his wealth:

In the majority of Western nations, the Muslim is compelled to contribute towards the *Harām* through mandatory and unescapable taxes attached to every transaction.⁴⁷⁴ Taxes, a portion of which, contributes towards the government which governs in opposition to the *Sharī'ah* of Allāh ﷻ. Another portion is directed to the armed forces; an entity forbidden for a Muslim to support or contribute towards. Allāh ﷻ says in *Sūrah al-Mā'idah* (5:2):

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ﴾

*And cooperate in righteousness and piety, but do not cooperate in sin and aggression.*⁴⁷⁵

The Government has defined extremism in the Prevent strategy as: ‘vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces’.” Refer to organisations such as the University of Oxford ([Faculty of Law](#)) and [CAGE](#) for a critique analysis and critique of the Prevent strategy

⁴⁷⁴ Taxes such as the UK's Value Added Tax (VAT), which currently stands at 20% on most goods, and is included in their retail price, and as such, it is impossible in the majority of cases to avoid paying this government levied tax. Refer to [GOV.UK](#) for a breakdown on how the UK Government spends VAT revenues

⁴⁷⁵ Indeed, knowingly and willingly contributing to the disbelievers war effort against Islām and the Muslims is one of the nullifiers of Islām, as mentioned by scholars such as Shaykh Muḥammad ibn ‘Abd al-Wahhāb, who stated in his treatise *The Nullifiers of Islām*, “Backing or supporting the polytheists and aiding them against the Muslims (nullifies ones Islām). And the evidence of this is the Saying of Allāh, the Most High (5:51):

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا الْيَهُودَ وَالنَّصَارَىٰ أَوْلِيَاءَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ

مِنْهُمْ

Ibn Ḥazm رَحِمَهُ اللَّهُ says in *al-Muḥallā* (7/573&574), “The Muslim trader’s business trip to *Dār al-Ḥarb* is *Ḥarām*, as upon entry he is belittled and the laws of the disbelievers are imposed upon him. As such, he should be prevented from (undertaking such journeys). However, if this is not the case, then his trip is *Makrūh* (disliked). (Ordinarily) trade with them (i.e. disbelievers) is permissible, except if it involves (selling them that which) strengthens them against the Muslims, such as animals (utilized in war), weapons, iron, or other than these. Thus, it is not permissible to sell them anything from these things, for the Exalted has said:

﴿فَلَا تَهِنُوا وَتَدْعُوا إِلَى السَّلَامِ وَأَنْتُمْ الْأَعْلَوْنَ﴾

So do not weaken and call for peace while you are superior.⁴⁷⁶

In addition to this, many are the Muslims, even fully-fledged citizens of these same countries, whose bank accounts and assets have been frozen due to actual or alleged links with the *Jihād* and *Mujāhidīn*. However, this is despite Allāh ﷻ commanding the believers:

﴿وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ﴾

And spend in the way of Allāh and do not throw [yourselves] with your [own] hands into destruction [by refraining from spending on Jihād].⁴⁷⁷

To make matters worse, this impermissibly seized wealth is not returned to its rightful owner upon his leaving the country.

O you who have believed, do not take the Jews and the Christians as allies. They are [in fact] allies of one another. And whoever is an ally to them among you - then indeed, he is [one] of them.

⁴⁷⁶ *Sūrah Muḥammad* (47):35. *Al-Muḥallā* (1579)

⁴⁷⁷ *Sūrah al-Baqarah* (2):195

Accordingly, if even after possessing a valid Visa or passport, it would indeed appear clear that there are no safeguards regarding the believer's person, wealth, and honour. In light of such a reality, the question is posed as to why the believer ought to be bound, or expected to extend these same assurances and safeties to the disbelieving host nation, while he does not enjoy them himself. Therefore, those who insist on claiming the Believer is required to abide by any terms implicitly stipulated by the Visa or covenant of security, despite the ones who issued it not abiding by such terms themselves, seem to be basing their opinions on a *Sharī'ah* other than the *Sharī'ah* of Islām. This is despite Allāh ﷻ commanding the believers in *Sūrah al-Baqarah* (2:194):

﴿الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَتُ قِصَاصٌ فَمَنْ أَعْتَدَى عَلَيْكُمْ
فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا أَعْتَدَى عَلَيْكُمْ﴾

And for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you.

Meaning, that if the believer is oppressed or treated unfairly, he is (generally) within his divinely given rights to deal with those responsible in a like fashion.

In addition, Allāh ﷻ says in *Sūrah al-Baqarah* (2:190):

﴿وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ﴾

Fight in the way of Allāh those who fight you

While in *Sūrah at-Tawbah* (9:12) He ﷻ orders the believers:

﴿وَإِنْ تَكْثُرُوا أَیْمَنَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعْنُوا فِي دِينِكُمْ فَقَاتِلُوا
أَیْمَةَ الْكُفْرِ إِنَّهُمْ لَا أَیْمَنَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ﴾⁴⁷⁸

And if they break their oaths after their treaty and defame your religion, then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease.

So, if one concedes to the reality that the Visa neither occupies, implicitly or explicitly, the status of the covenant of security, from the perspectives of its description, written conditions, or customs. One is forced to conclude, according to the principle of *Istiṣhāb*,⁴⁷⁸ that such disbelieving nations revert to their default state - that of being *Diyār al-Ḥarb*:⁴⁷⁹ lands in which the blood, wealth, and honour of the disbelieving inhabitants are permissible, due to the absence of any factors changing this ruling.

That being said, for the sake of those that adhere to the opinion arguing the Visa does constitute a valid covenant of security, there are a number of factors clearly nullifying any treaty or covenant that may have been. It should be noted, that while this is not necessarily the case across the board, it nonetheless applies to a significant number of disbelieving countries today.

The **first** is that they allow, actively promote, and protect those who insult Allāh ﷻ and His Messengers ﷺ. A crime impermissible for the believers to pardon, with Allāh ﷻ saying about such people in *Sūrah at-Tawbah* (9:12):

⁴⁷⁸ The principle of *al-Istiṣhāb* (الإستصحاب) refers to, amongst other things, a matter remaining upon its original ruling in the absence of something that changes its nature. Refer to *al-Wajīz fī Uṣūl al-Fiqh* (pp.267-281) for more details concerning this principle

⁴⁷⁹ *Diyār* (ديار) is the plural of *Dār* (دار), meaning abode, or land

﴿وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا
أَيِّمَةَ الْكَفْرِ إِنَّهُمْ لَا أَيْمَانَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ ﴿١٢﴾﴾

And if they break their oaths after their treaty and defame your religion, then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease.

According to the verse, such crimes instantaneously nullify any treaty or covenant, evident in the actions of the Messenger of Allāh ﷺ when he ordered the assassination of Ka'b ibn al-Ashraf. Upon being questioned by the Jews as to why he ﷺ assassinated their chief, despite the latter's treaty with the Muslims, he ﷺ replied:

إِنَّهُ لَوْ قَرَّرَ كَمَا قَرَّرَ غَيْرُهُ لَمَّا أُودِيَ، لَكِنَّهُ نَالَ مِنَّا الْأَذَى وَهَجَانًا بِالشُّعْرِ، وَلَمْ يَفْعَلْ هَذَا أَحَدٌ مِنْكُمْ إِلَّا كَانَ السَّيْفَ

*“If only he had calmed down like the others who share his opinion did, however he insisted on slandering and satirising us with his poetry. And there is none amongst you who would do like he did, except that the sword (will be his lot).”*⁴⁸⁰

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللَّهُ says in (*Mukhtaṣar*) *Ṣārim al-Maslūl* (p.54), “Ka'b had a covenant, however he violated it when he cursed (the Prophet ﷺ), and he ﷺ said regarding him:

فَإِنَّهُ قَدْ آذَى اللَّهَ وَرَسُولَهُ

⁴⁸⁰ *Mukhtaṣar Ṣārim al-Maslūl* (p.54). The story of Ka'b ibn al-Ashraf's assassination can be found in *Ṣaḥīḥ al-Bukhārī: The Book of Mortgaging* (2510) and *The Book of Expeditions Led by the Prophet* (4037), *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1801), al-Bayhaqī's *Sunan al-Kubrā: Kitāb as-Siyar* (18102), and others

‘Indeed he has certainly harmed Allāh and His Messenger.’⁴⁸¹

Thus, anyone who harms Allāh and His Messenger ﷺ should be killed; and to curse Him is to harm Him and His Messenger ﷺ according to the consensus of the Muslims. As such, it becomes *Wājib* to kill (such a person).”

Ibn Ḥajar رحمه الله comments in *Fath al-Bārī* (7/340) about that which was apparent in the actions of Muḥammad ibn Maslamah رحمه الله, when he mentioned somewhat negative words about the Prophet ﷺ to ibn al-Ashraf in order to gain the latter’s trust: “It is permissible to say whatever is needed in war, even if the speaker does not intend it’s literal meaning.” The meaning of ibn Ḥajar’s words can be considered from two perspectives; the first involves the apparently unbefitting speech regarding the Messenger of Allāh ﷺ. While the second involving his speech aimed at allaying any concerns Ka’b may have had dealing with followers of his sworn enemy (ﷺ). Words, which some scholars point out, would have under normal circumstances, constituted a covenant of security between the two.

Imām an-Nawawī رحمه الله further clarifies this in *al-Minhāj* (4/1896) saying, “*Al-Imām* al-Māzinī said, ‘He was only killed in such a fashion due to his cursing and satire, which violated his treaty.’” An-Nawawī also said, referring to Muḥammad ibn Maslamah’s رحمه الله words to the Prophet ﷺ, ‘Permit me, so that I may say...’ “It’s meaning is: Permit me so that I may say about me and you using *Ta’rīd* (i.e. deception) that which I perceive beneficial. In this is evidence regarding the permissibility of *Ta’rīd* - which is to say words wherein their hidden (meaning) is true, however the addressee will understand something different. Thus, this is permissible in war and other than it...”⁴⁸²

⁴⁸¹ *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1801)

⁴⁸² An example of this was Abū Bakr’s رحمه الله words to whoever asked him regarding the identity of his companion - the Prophet ﷺ during their

In light of this, the *Mujāhid* may say to the disbelieving immigration officer, 'I have come (to your country) for tourism.' Intending with his words, contrary to the understanding of the immigration official, 'I have come to wage *Jihād*.' The is because the Prophet ﷺ said in a narration collected by Abū Dāwūd رَحِمَهُ اللَّهُ in his *Sunan: The Book of Jihād* (2486):

إِنَّ سِيَاحَةَ أُمَّتِي الْجِهَادُ فِي سَبِيلِ اللَّهِ

“The tourism of my Ummah is Jihād in the cause of Allāh.”⁴⁸³

Another incident pertinent to this issue that occurred during the life of the Messenger of Allāh ﷺ was that of the assassination of another Jew, Abī Rāfi ibn Abī al-Ḥuqayq. Al-Bukhārī رَحِمَهُ اللَّهُ records in his *Ṣaḥīḥ: The Book of Military expeditions led by the Prophet* (4040):

بَعَثَ رَسُولُ اللَّهِ ﷺ إِلَى أَبِي رَافِعٍ عَبْدَ اللَّهِ بْنِ عَتِيكَ، وَعَبْدَ اللَّهِ بْنِ عُتْبَةَ، فِي نَاسٍ مَعَهُمْ، فَاَنْطَلَقُوا حَتَّى دَنَوْا مِنَ الْحِصْنِ

“The Messenger of Allāh ﷺ dispatched ‘Abdullāh ibn ‘Atīq, ‘Abdullāh ibn ‘Utbaḥ, and some others رَحِمَهُمُ اللَّهُ to Abū Rāfi’, so they set off until they reached his fortress...” The incident ended with ‘Abdullāh ibn ‘Atīq رَحِمَهُ اللَّهُ slipping into the enemy of Allāh’s fortress and assassinating him, after employing deception multiple times throughout the course of his mission.⁴⁸⁴

migration, “He is my guide,” which he understood would be taken to mean, ‘this man is guiding me along my route (through the desert).’ However, he intended by his words, ‘this man is guiding me spiritually and physically towards Paradise and Allāh’s pleasure.’ Refer to *The Sealed Nectar* (p.172) for an account of this incident

⁴⁸³ Also collected by al-Bayhaqī in his *Sunan al-Kubrā: Kitāb as-Siyar* (18506) and al-Ḥākim

⁴⁸⁴ Refer to the narration in *Ṣaḥīḥ Muslim* (4040) for a full account of the operation

These narrations, those regarding the assassination of Khālīd ibn Sufyān, and Abū Basīr's رضي الله عنه murdering his captor,⁴⁸⁵ also serve as evidence of the permissibility of uttering words, and behaving in a manner that could be construed to entail a covenant of security. During military operations, such actions, although not explicit in granting a covenant of security, are nonetheless understood customarily as an act of granting a covenant of security are permissible. Highlighting, that even if the Visa did customarily imply a covenant of security, if intended by the *Mujāhidīn* as a form of *Ta'rīd*, in order to strike the enemy there is no problem in this according to the understanding of earlier scholars. That being said, if one is able to avoid such actions it may be preferable, as on one hand, any doubts regarding the permissibility of such actions are allayed. And on the other, the disbelievers would have no recourse whatsoever to accuse the believers of treachery, and Allāh ﷻ knows best.

In the explanation of *Siyar al-Kabīr* (1/1602) Muḥammad ibn Ḥasan ash-Shaybānī رحمته الله says regarding the Muslim POW who deceives his disbelieving captors in order to kill them: “And if the prisoner would say to them, ‘I have medical knowledge,’ so they ask him to administer them medicine, but instead he poisons, and kills them. There is no problem with this, as this is inflicting destruction amongst them...”

Accordingly, even if we suppose that the Visa is a valid covenant of security, then then the act of insulting, or sheltering those who curse Allāh and His Prophet ﷺ would certainly be a cause for its nullification.

Secondly, in many countries, freedom of expression as it relates to Islām, is severely restricted. Thus, if the Believer wishes to fulfil the command of Allāh ﷻ directed at His Prophet ﷺ,

⁴⁸⁵ The narration regarding this incident is recorded on (pp.715-717)

nevertheless applying to all of the believers,⁴⁸⁶ outlined in *Sūrah an-Nisā* (4:84):

﴿فَقَاتِلْ فِي سَبِيلِ اللَّهِ لَا تُكَلَّفُ إِلَّا نَفْسَكَ وَحَرِّضَ الْمُؤْمِنِينَ﴾

So fight in the cause of Allāh; you are not held responsible except for yourself. And incite the believers [to fight].

He or she understands, regardless of the existence of a covenant, they will surely be heading to prison, or worse. Similar is the case with speaking about, calling to, and acting according to that which is necessitated by *al-Walā' wa'l-Barā'*,⁴⁸⁷ and *Kufr bi't-Ṭaghūt*.⁴⁸⁸ Neither is the Believer able to wage *Jihād* with his wealth per the command of the Messenger ﷺ:

⁴⁸⁶ In *Ṣaḥīḥ Muslim: The Book of Zakāh* (1015), The Prophet ﷺ said:

إِنَّ اللَّهَ أَمَرَ الْمُؤْمِنِينَ بِمَا أَمَرَ بِهِ الْمُرْسَلِينَ

“Indeed, Allāh has commanded the believers with whatever He has commanded the Messengers with.”

In addition, in *Fath al-Qadīr* (1/568) ash-Shawkānī relates, “Ibn ‘Aṭīyyah said, ‘... (In reality) fighting was not only an obligation upon him (ﷺ) to the exclusion of the (rest of the) *Ummah*. As such, the meaning (of the verse) and Allāh knows best, is that he is being addressed in the apparent wording (of the verse), while it’s meaning is that (the address) is for him and for the rest of his *Ummah*. As though Allāh is saying to him, O Muḥammad, along with everyone from your *Ummah*, **fight in the cause of Allāh; you are not held responsible except for yourself**. (And this) means that you are not held responsible for the actions of anyone save yourself.” While al-Qurṭubī says concerning the verse (4:84) in his *Tafsīr* (3/256), “It is incumbent upon every believer to wage *Jihād*, even if he is alone.”

⁴⁸⁷ “*Al-Walā'* is a manifestation of sincere love for Allāh, His Prophets and the believers; *al-Barā'*, on the other hand, is an expression of enmity and hatred towards falsehood and its adherents. Both are evidence of *Īmān*.” (*Al-Walā' wa'l-Barā': According to the Aqeedah of the Salaf; Part 1*, p.5)

⁴⁸⁸ Ibn Qayyim defines the term *Ṭaghūt* in *I'lām al-Muwaqqi'īn* (1/40) saying, “It is everything in which man exceeds his limits, whether it is in relation to being worshiped, followed, or obeyed. So the *Ṭaghūt* of every community is he from whom judgement is sought, instead of what Allāh and His Messenger

جَاهِدُوا الْمُشْرِكِينَ بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ وَأَلْسِنَتِكُمْ

“Wage Jihād against the polytheists with your wealth, your selves, and your tongues.”⁴⁸⁹

Even calling, and working towards the implementation of the *Sharī’ah* is enough in many disbelieving countries for the believer to conflict with the security agencies.

A **third** reason nullifying any covenant that the Visa may represent, is the act of the disbelievers’ incitement, aggression, and/or condoning their allies’ aggression against the Muslims.

Likewise, every state that contributes financially, militarily, or verbally towards the war on Islām, has without a doubt nullified any treaty or covenant of security they may have once had with the Muslims. A fact that should not require any further elaboration, and an act that has made *Jihād* against them *Wājib* due to Allāh’s command in *Sūrah al-Baqarah* (2:191):

﴿فَإِنْ قَاتَلْتُمُوهُمْ فَاقْتُلُوهُمْ كَذَلِكَ جَزَاءُ الْكَافِرِينَ﴾

If they fight you, then kill them. Such is the recompense of the disbelievers.

have ruled; or those whom they worshiped besides Allāh; or whom they follow without and proof from Allāh, while not knowing if it is accordance with the Judgement of Allāh.”

Thus, *Kufr bi’t-Ṭaghūt* is to disbelief and reject all forms of *Ṭaghūt*, with the heart, by disbelieving in, and hating every *Ṭaghūt*. With the tongue, by verbally rejecting and declaring one’s enmity towards the *Ṭaghūt* and his followers. By the limbs, by making *Hijrah* from the lands of the *Ṭaghūt*, and waging *Jihād* against the *Ṭaghūt*, his helpers and supporters, ***until there is no more Fitnah (Kufr and Shirk), and the religion in its entirety is for Allāh alone.***

⁴⁸⁹ *Sunan Abī Dāwūd: The Book of Jihād* (2504), *Sunan an-Nasā’ī: The Book of Jihād* (3097), *Musnad Ahmad* (12268), and *Ṣaḥīḥ ibn Hibbān* (4708). Authenticated by *al-Albānī in Ṣaḥīḥ Abī Dāwūd* (2262)

Even though the word '*Qitāl*' (fighting) is used in the verse, as has been mentioned, its ruling is not however restricted to physical fighting. Rather this 'fighting' encompasses everything that contributes towards it; from financial, verbal, moral, logistical, and technical support, as has preceded (in Chapter 14).

So, if the *Sharī'ah* permits the killing of those usually impermissible from the disbelievers' women, children, and elderly due to these reasons, then how about those whose default ruling is that of *Harbī* - Those whose blood, wealth, and honour are already permitted?

As far as the act of condoning the aggression of one's ally(s) against the *Ummah*, ibn Qayyim رَحِمَهُ اللَّهُ said in *Zād al-Ma'ād* (2/20), "From his ﷺ guidance was that if a people entered into a treaty and then some of them nullified (i.e. broke) it, whilst the others remained faithful but nevertheless condoned the actions of those who were unfaithful. He would attack them all, and regard them all as having nullified their treaty, as he did with (Banī) Naḍīr, Banī Qaynuqā', and the people of Makkah. Thus, this was his *Sunnah* with regards to those he had treaties with."

Allāh ﷻ says in *Sūrah at-Tawbah* (9:12-15) regarding the disbelievers that break treaties:

﴿وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ
فَقَاتِلُوا أَيْمَةَ الْكُفْرِ إِنَّهُمْ لَا أَيْمَنَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ
﴿١٢﴾ أَلَا تَقَاتِلُونَ قَوْمًا نَكَثُوا أَيْمَانَهُمْ وَهَمُّوا بِإِخْرَاجِ
الرَّسُولِ وَهُمْ بَدَءُوكُمْ أَوَّلَ مَرَّةٍ أَتَخْشَوْنَهُمْ فَاللَّهُ أَحَقُّ أَنْ
تَخْشَوْهُ إِنْ كُنْتُمْ مُؤْمِنِينَ ﴿١٣﴾ فَتِلْوْهُمْ يُعَذِّبُهُمُ اللَّهُ بِأَيْدِيكُمْ

وَيُخْزِهِمْ وَيَبْغِزُهُمْ عَلَيْهِمْ وَيَشْفِ صُدُورَ قَوْمٍ مُّؤْمِنِينَ ﴿١٤﴾ وَيَذْهَبَ
عَيْظَ قُلُوبِهِمْ وَيَتُوبُ اللَّهُ عَلَى مَنْ يَشَاءُ وَاللَّهُ عَلِيمٌ حَكِيمٌ ﴿١٥﴾

And if they break their oaths after their treaty and defame your religion, then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease. Would you not fight a people who broke their oaths and determined to expel the Messenger, and they had begun [the attack upon] you the first time? Do you fear them? But Allāh has more right that you should fear Him, if you are [truly] believers. Fight them; Allāh will punish them by your hands and will disgrace them and give you victory over them and satisfy the breasts [i.e., desires] of a believing people. And remove the fury in their [i.e., the believers'] hearts. And Allāh turns in forgiveness to whom He wills; and Allāh is Knowing and Wise. ⁴⁹⁰

He ﷻ also says in *Sūrah al-Anfāl* (8:55-57):

﴿إِنَّ شَرَّ الدَّوَابِّ عِنْدَ اللَّهِ الَّذِينَ كَفَرُوا فَهُمْ لَا يُؤْمِنُونَ﴾ الَّذِينَ
عَاهَدَتْ مِنْهُمْ ثُمَّ يَنْفُضُونَ عَهْدَهُمْ فِي كُلِّ مَرْقٍ وَهُمْ لَا

⁴⁹⁰ Despite being revealed regarding the Quraysh and their ally's Banī Bakr, the ruling of the verse applies to anyone sharing the characteristics it mentions, according to the principle, 'Consideration is given to the generality of the wording, not the specific reason for its revelation,' which in Arabic is (العبرة بعموم اللفظ لا بخصوص السبب). This principle is explained by Shaykh al-'Uthaymīn in *The Foundations of the Knowledge of Uṣūl* (p.49), "So when we find something general that has come about due to a specific reason, then we must act upon the general (text); because what counts is the generality of the wording and not the specifics of the reason (the text was revealed). Except when evidence indicates the specific nature of the text, thereby making it specific to whatever is similar to it."

يَتَّقُونَ ﴿٥٦﴾ فَإِمَّا تَثَقَفَنَّاهُمْ فِي الْحَرْبِ فَشَرِّدْ بِهِمْ مَنْ خَلَفَهُمْ لَعَلَّهُمْ
يَذْكُرُونَ ﴿٥٧﴾

Indeed, the worst of living creatures in the sight of Allāh are those who have disbelieved, and they will not [ever] believe - The ones with whom you made a treaty but then they break their pledge every time, and they do not fear Allāh. So if you gain dominance over them in war, disperse by [means of] them those behind them that perhaps they will be reminded.

In conclusion, even if it were held that the Visa is a valid covenant of security, then it would be possible to divide the disbelieving nations into three categories:

The **first** are those who customarily treat the Visa as a covenant of security, even if it is not explicitly stated on the document or its application forms. They faithfully uphold their side of the covenant and do not act treacherously in any way towards those whom they issue Visas. Allāh says about such people:

﴿فَمَا اسْتَقَمُّوْا لَكُمْ فَاسْتَقِيْمُوا لَهُمْ﴾

*So as long as they are upright toward you, be upright toward them.*⁴⁹¹

The **second** are those who customarily treat the Visa as a covenant of security, however prove treacherous, violating their side of the covenant. Allāh ﷻ says about this group:

⁴⁹¹ Sūrah at-Tawbah (9:7)

﴿وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ
فَقَاتِلُوا أَيْمَةَ الْكُفْرِ إِنَّهُمْ لَا أَيْمَانَ لَهُمْ لَعَلَّهُمْ
يَنْتَهُوْنَ ۝١٤﴾

*And if they break their oaths after their treaty and defame your religion, then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease.*⁴⁹²

While the **third** are those who do not customarily regard the Visa as a covenant of security, nor do they in general respect any covenants they make with the believers. Allāh ﷻ says about this group:

﴿كَيْفَ وَإِنْ يَظْهَرُوا عَلَيْكُمْ لَا يَرْقُبُوا فِيكُمْ إِلَّا وَلَا ذِمَّةً
يُرْسُونَكُمْ يَأْفِكُونَهُمْ وَيَتَّابُونَ قُلُوبَهُمْ وَأَكْثَرُهُمْ فَاسِقُونَ ۝٩
أَشْتَرُوا بِآيَاتِ اللَّهِ ثَمَنًا قَلِيلًا فَصَدُّوا عَنْ سَبِيلِهِ إِنَّهُمْ سَاءَ مَا
كَانُوا يَعْمَلُونَ ۝١٠﴾ لَا يَرْقُبُونَ فِي مُؤْمِنٍ إِلَّا وَلَا ذِمَّةً وَأُولَٰئِكَ
هُمُ الْمُعْتَدُونَ ۝١١﴾

How [can there be a treaty] while, if they gain dominance over you, they do not observe concerning you any pact of kinship or covenant of protection? They satisfy you with their mouths, but their hearts refuse [compliance], and most of them are defiantly disobedient. They have exchanged the signs of Allāh for a small price and averted [people] from His way. Indeed, it was evil that they were doing. They do not observe toward a believer any pact of kinship or

⁴⁹² Sūrah at-Tawbah (9:12)

covenant of protection. And it is they who are the transgressors.⁴⁹³

Concerning the first group, if they exist, it would be safe to assume that today they would be in an extremely small minority. If however, for arguments sake, it was agreed that there does exist disbelieving nations that customarily regarded the Visa to be equivalent to the covenant of security. One is forced to admit the majority of countries, especially Western, would have nullified the terms of their treaty by the actions mentioned throughout this chapter. Thus, the believer would not be bound to abide by any former treaty that did exist between him and his 'host' nation, as Islām is not a religion of foolish, nonsensical, and impractical rules and regulations. It neither requires the believer to abide by defunct agreements with an enemy who has proved unrepentantly and repeatedly treacherous. This was clear in the actions of the Prophet ﷺ when he dealt with those who broke their treaties, such as Ka'b ibn Ashraf, Abū Rāfi', and the Quraysh when they supported Banī Bakr against the allies of the Muslims - the Khuzā'ah tribe.⁴⁹⁴

The Most High says about those who blatantly break their treaties:

⁴⁹³ *Sūrah at-Tawbah* (9:8-10)

⁴⁹⁴ Ibn Qayyim says in *Zād al-Ma'ād* (2/191) about the incident of the Quraysh and Banī Bakr, "When the treaty of al-Ḥudaybiyyah was conducted between the Messenger of Allāh ﷺ and the Quraysh, it was stipulated that whoever wished could enter into the agreement and covenant on the side of the Messenger of Allāh ﷺ, and whoever wished could enter into the agreement and covenant on the side of the Quraysh. So Banī Bakr entered on the Quraysh's side, and (the tribe of) al-Khuzā'ah did so as allies of the Messenger of Allāh ﷺ. After a while, Banī Bakr raided al-Khuzā'ah and captured spoils from them seeking to reignite the old animosity they shared between each other [...] and the Quraysh assisted them (i.e. Banī Bakr) with weapons, and a number of the Quraysh secretly participated with them in the fighting under the cover of darkness."

﴿إِنَّ شَرَّ الدَّوَابِّ عِنْدَ اللَّهِ الَّذِينَ كَفَرُوا فَهُمْ لَا يُؤْمِنُونَ ٥٥﴾ الَّذِينَ
عَاهَدَتْ مِنْهُمْ ثُمَّ يَنْفُضُونَ عَهْدَهُمْ فِي كُلِّ مَرْقٍ وَهُمْ لَا
يَتَّقُونَ ٥٦﴾ فَإِمَّا تَثَقَفَنَّاهُمْ فِي الْحَرْبِ فَشَرِّدْ بِهِمْ مَنْ خَلَفَهُمْ لَعَلَّهُمْ
يَذْكُرُونَ ﴿٥٧﴾

Indeed, the worst of living creatures in the sight of Allāh are those who have disbelieved, and they will not [ever] believe. - The ones with whom you made a treaty but then they break their pledge every time, and they do not fear Allāh. So if you, [O Muḥammad], gain dominance over them in war, disperse by [means of] them those behind them that perhaps they will be reminded. ⁴⁹⁵

He ﷺ also says in *Sūrah at-Tawbah* (9:14&15) about those who prove treacherous from the disbelievers:

﴿قَاتِلُوهُمْ يُعَذِّبُهُمُ اللَّهُ بِأَيْدِيكُمْ وَيُخْزِيهِمْ وَيَضْرِبُهُمْ عَلَىٰ
وَيْسِفٍ صُدُورِ قَوْمٍ مُّؤْمِنِينَ ١٤﴾ وَيُذْهِبْ غَيْظَ قُلُوبِهِمْ ﴿١٥﴾

Fight them; Allāh will punish them by your hands and will disgrace them and give you victory over them and satisfy the breasts [i.e., desires] of a believing people. And remove the fury in their [i.e., the believers'] hearts.

Accordingly, the believer need not concern himself with adhering to any possible treaties the Visa may entail if the issuers of it, either do not regard it customarily as a covenant of security. Or they claim to do so, but nevertheless act

⁴⁹⁵ *Sūrah al-Anfāl* (8):55-57

treacherously regarding their fulfilment of its terms. Although, the *Mujāhidīn* are required to investigate any potential countries they wish to target before engaging in any military activity, so as to ensure they are amongst those countries permissible to target in such a way, and Allāh ﷻ knows best.

CHAPTER SUMMARY

The Visa has been likened by a number of contemporary scholars as customary form of the covenant of security, due to the principles of *Fiqh*:

المَعْرُوفُ عُرْفًا كَالْمَشْرُوطِ شَرْطًا

‘What is understood customarily is the same as the stipulated condition.’

And:

الْعَادَةُ مُحَكَّمَةٌ

‘That which is customary is binding.’

In relation to the categories of disbelievers with regards to the Visa representing a covenant of security, they are three:

- 1) Those who customarily treat the Visa as a covenant of security; they faithfully uphold their side of the covenant and do not act treacherously in any way towards those whom they issue Visas.

Thus, the believer must not behave treacherously to such disbelievers, by transgressing against their wealth, blood, or honour for the duration of any covenant

- 2) Those who customarily treat the Visa as a covenant of security, however prove treacherous, violating their side of the covenant.

Regarding this category, the believers are required to uphold their side of the covenant for as long as the disbelievers do so, however upon transgression on the part of the disbelievers, their wealth, blood, and honour are once again permitted for the believers.

- 3) Those who do not customarily regard the Visa as a covenant of security, with evidence of this is apparent from a number of angles, such as believers in their lands not being safe concerning their selves, wealth, and families.

This group is the majority - and Allāh ﷻ knows best - and are those the believer may freely attack and plunder despite entering their counties after being issued a Visa.

CHAPTER 22

أحكام الجواسيس

THE RULINGS REGARDING SPIES

Allāh ﷻ has prohibited spying against the believers, in its general sense, in *Sūrah al-Hujurāt* (49:12) wherein He commanded the believers:

﴿وَلَا تَجَسَّسُوا﴾

And do not spy

In a narration recorded in both *Ṣaḥīḥ al-Bukhārī: The Book of Manners* (6064) and *Ṣaḥīḥ Muslim: The Book of Virtue, Enjoining Good manners, and Joining the Ties of Kinship* (2563) Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ narrated that the Prophet ﷺ said:

إِيَّاكُمْ وَالظَّنَّ، فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ، وَلَا تَحَسَّسُوا، وَلَا تَجَسَّسُوا،
وَلَا تَنَافَسُوا، وَلَا تَحَاسَدُوا، وَلَا تَبَاغَضُوا، وَلَا تَدَابَرُوا، وَكُونُوا عِبَادَ اللَّهِ
إِخْوَانًا

“Beware of suspicion, as indeed (evil) suspicion is the falsest of speech. Do not spy,⁴⁹⁶ compete (for the dunyā), envy, hate, or abandon one another. Rather be, O slaves of Allāh, brothers.”⁴⁹⁷

In *Sunan Abī Dāwūd: The Book of Manners* (4880) Abū Barzah al-Aslamī رضي الله عنه narrated that the Prophet ﷺ said:

يَا مَعْشَرَ مَنْ آمَنَ بِلِسَانِهِ، وَلَمْ يَدْخُلِ الْإِيمَانُ قَلْبَهُ، لَا تَغْتَابُوا الْمُسْلِمِينَ،
وَلَا تَتَّبِعُوا عَوْرَاتِهِمْ، فَإِنَّهُ مَنْ اتَّبَعَ عَوْرَاتِهِمْ يَتَّبِعِ اللَّهُ عَوْرَتَهُ، وَمَنْ يَتَّبِعِ
اللَّهُ عَوْرَتَهُ يَفْضَحْهُ فِي بَيْتِهِ

“O you who have proclaimed belief with your tongues but faith has not yet entered your hearts, do not back-bite the Muslims, and do not seek out their secrets (i.e. spy). For indeed, whoever seeks out the (Muslims) secrets, Allāh will seek out his secrets, and whoever's secrets Allāh seeks out, He will expose even if done in the confines of his house.”⁴⁹⁸

Likewise, in *Ṣaḥīḥ Muslim: The Book of Manners* (2158) Abū Hurayrah رضي الله عنه narrates that the Prophet ﷺ said:

مَنْ أَطْلَعَ فِي بَيْتِ قَوْمٍ بِغَيْرِ إِذْنِهِمْ، فَقَدْ حَلَّ لَهُمْ أَنْ يَفْقُتُوا عَيْنَهُ

“It is permissible for the inhabitants of a house to poke out the eye of the one who peeks into their house without permission.”⁴⁹⁹

⁴⁹⁶ The word in the *Ḥadīth*, *Taḥassasū* (تَحَسَّسُوا) means, according to an-Nawawī, to eavesdrop on people's conversations, while *Tajassasū* (تَجَسَّسُوا) means to seek out people's secrets and hidden affairs

⁴⁹⁷ Similar narrations are also found in *Sunan Abī Dāwūd: The Book of Good Manners* (4917), *al-Muwaṭṭa'* (2640), and *Musnad Aḥmad: Musnad Abī Hurayrah* (7858)

⁴⁹⁸ Also in *Musnad Aḥmad: Awwal Musnad al-Baṣṣariyyīn* (19776&19801)

⁴⁹⁹ Similar narrations are also in *Ṣaḥīḥ al-Bukhārī: The Book of Blood Money* (6902), *Sunan Abī Dāwūd: The Book of Manners* (5172), and *Musnad Aḥmad: Musnad Abī Hurayrah* (7313)

However, in the context of *Jihād* specifically, the (enemy) spy is the one who works against the Islamic state, the Muslims, and the *Mujāhidīn* in particular. He may be a Muslim, a disbeliever (*Ḥarbī*), or one having a covenant with the Muslims.

تعريف التجسس

DEFINITION OF SPYING

In *Tāj al-‘Arūs* (15/499) spying is defined as, “To search for the secrets (of the people that the spy is spying against).”

The meaning of ‘secrets of the Muslims’ is as related in *al-Musābiḥ al-Munīr* (2/437): “The secrets relating to the weaknesses of the *Thughr* (i.e. the front lines) and warfare (in general) that are sources of concern (to the Muslims).”

In *al-Umm* (3/263) ash-Shāfi’ī رحمه الله explains the work of the spy, explaining, “He writes to the polytheists from *Ahl al-Ḥarb* informing them that the Muslims are intending on attacking them.”

Ad-Dardīr رحمه الله also clarifies in *Sharḥ al-Kabīr* (2/205): “He writes a letter or sends a messenger (to the enemy) with information, for example, that such-and-such place is unguarded, in order that they may use it to infiltrate (into the Muslims’ territory).”

Likewise, in al-Bukhārī’s *Ṣaḥīḥ: The Book of Jihād and Expeditions* (3051), he رحمه الله records the incident of the spy that infiltrated the camp of the Muslims as they prepared to attack Hawāzin. Salamah ibn al-Akwa’ رحمه الله narrates:

أَتَى النَّبِيَّ ﷺ عَيْنٌ مِنَ الْمُشْرِكِينَ وَهُوَ فِي سَفَرٍ، فَجَلَسَ عِنْدَ أَصْحَابِهِ يَتَحَدَّثُ، ثُمَّ انْفَتَلَ، فَقَالَ النَّبِيُّ ﷺ: «اطْلُبُوهُ، وَاقْتُلُوهُ». فَقَتَلَهُ، فَنَفَلَهُ سَلْبَهُ

“While he was on a journey, a spy from the infidels came to the Prophet ﷺ. The spy sat with the Companions of the Prophet, started talking, and then went away. The Prophet ﷺ said, ‘Catch him and kill him.’ So he was killed.” “The Prophet ﷺ then gave him (i.e. Salamah) the belongings of the killed spy (in addition to his share of the *Ghanīmah*).”

Imām Muslim رَحِمَهُ اللَّهُ records the same incident in his *Ṣaḥīḥ: Book of Jihād and Expeditions* (1754) from Salamah ibn al-Akwa' رَضِيَ اللَّهُ عَنْهُ who narrates:

غَزَوْنَا مَعَ رَسُولِ اللَّهِ ﷺ هَوَازِنَ، فَبَيْنَا نَحْنُ نَتَضَحَّى مَعَ رَسُولِ اللَّهِ ﷺ إِذْ جَاءَ رَجُلٌ عَلَى جَمَلٍ أَحْمَرَ، فَأَنَآخَهُ، ثُمَّ انْتَرَعَ طَلْقًا مِنْ حَقْبِهِ، فَقَيَْدَ بِهِ الْجَمَلَ، ثُمَّ تَقَدَّمَ يَتَعَدَّى مَعَ الْقَوْمِ، وَجَعَلَ يَنْظُرُ وَفِينَا ضَعْفَةٌ وَرِقَّةٌ فِي الظَّهْرِ، وَبَعْضُنَا مُشَاةٌ، إِذْ خَرَجَ يَشْتَدُّ، فَأَتَى جَمَلَهُ، فَأَطْلَقَ قَيْدَهُ ثُمَّ أَنَآخَهُ، وَقَعَدَ عَلَيْهِ، فَأَثَارَهُ فَاشْتَدَّ بِهِ الْجَمَلُ، فَاتَّبَعَهُ رَجُلٌ عَلَى نَاقَةٍ وَرِقَاءَ، قَالَ سَلَمَةُ: وَخَرَجْتُ أَشْتَدُّ فَكُنْتُ عِنْدَ وَرِكَ النَّاقَةِ، ثُمَّ تَقَدَّمْتُ حَتَّى كُنْتُ عِنْدَ وَرِكَ الْجَمَلِ، ثُمَّ تَقَدَّمْتُ حَتَّى أَخَذْتُ بِخَطَامِ الْجَمَلِ فَأَنَخْتُهُ، فَلَمَّا وَضَعَ رُكْبَتَهُ فِي الْأَرْضِ اخْتَرَطْتُ سَيْفِي، فَضَرَبْتُ رَأْسَ الرَّجُلِ، فَنَدَرَ، ثُمَّ جِئْتُ بِالْجَمَلِ أَقْوَدُهُ عَلَيْهِ رَحْلُهُ وَسِلَاحُهُ، فَاسْتَقْبَلَنِي رَسُولُ اللَّهِ ﷺ وَالنَّاسُ مَعَهُ، فَقَالَ: «مَنْ قَتَلَ الرَّجُلَ؟» قَالُوا: ابْنُ الْأَكْوَعِ، قَالَ: «لَهُ سَلْبُهُ أَجْمَعُ»

“We fought the battle of Hawāzin along with the Messenger of Allāh ﷺ. (One day) when we were having breakfast with the

Messenger of Allāh ﷺ a man came riding a red camel. He made it kneel down, extracted a strip of leather from its girth, and tethered the camel with it. Then he began to eat with the people and look (curiously) around. We were in a poor condition as some of us were on foot (being without any mounts). All of a sudden, he hurriedly left us, went to his camel, untied it, made it kneel, mounted it, and then proceeded to speed off. A man on a brown she-camel gave chase (assuming him to be a spy). I followed on foot running until I neared the thigh of the she-camel. I kept running until I caught hold of its nose string, thereupon I made it kneel. As soon as it placed its knee on the ground, I drew my sword and struck the head of the rider, who fell (dead). I returned with the camel, the man's baggage, and his weapons. The Messenger of Allāh ﷺ came forward accompanied by people to meet me. He asked, 'Who killed the man?' The people replied, 'ibn al-Akwa'.' He said, 'Everything from the man is for him.'”⁵⁰⁰

In summary, according to the classic scholars, spying is the attempt to convey classified or secret military intelligence and that, which is related to it. The type of information the host nation strives to prevent the exposure of to others. It is the same whether the spy's attempts to collect this information succeed or not, and likewise whether or not he is successful in relaying this classified information to the enemy after gathering it.

However, the work of the contemporary spy is broader than the aforementioned definitions: Amongst his or her roles, in addition to the above, is to routinely search out and identify targets, and provide coordinates for the disbelievers' drone, air, and missile strikes on the Muslims. They also infiltrate the organisations and groups of *Mujāhidīn* seeking to steer opinions, and ultimately the direction of the movement towards those favourable to the

⁵⁰⁰ Similar narrations are also found in *Sunan Abī Dāwūd: The Book of Jihād* (2654), *Ṣaḥīḥ ibn Hībān: The Book of the Spoils of War and Their Shares* (4843) aṭ-Ṭabarānī (6241), *Musnad Aḥmad*, and others

disbelievers. Spreading dissention, *Irjāf* (fear, worry, and panic), false rumours, and disinformation amongst the believers are also from their roles and responsibilities. As is 'entrapping' Muslims by persueding or bribing them to participate in (or at the very least, remain silent about) acts of 'terrorism', which are invariably sting operations set up by counter-terror agencies, which routinely lead to lengthy prison sentences for those convicted. Recruiting others to participate in all of the above is likewise another role of the contemporary spy.

حكم الجاسوس

THE RULING REGARDING THE (ENEMY) SPY

As previously mentioned, the spy may be a *Harbī*, a Muslim, or a *Mu'āhid* (a disbeliever having a covenant with the Muslims).

حكم الجاسوس العربي

THE RULING REGARDING THE ḤARBĪ SPY

Al-Bukhārī رَحِمَهُ اللهُ narrates in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (3051) from Salamah ibn al-Akwa' رَحِمَهُ اللهُ عَنهُ:

أَتَى النَّبِيَّ ﷺ عَيْنٌ مِنَ الْمُشْرِكِينَ وَهُوَ فِي سَفَرٍ، فَجَلَسَ عِنْدَ أَصْحَابِهِ
يَتَحَدَّثُ، ثُمَّ انْفَتَلَ، فَقَالَ النَّبِيُّ ﷺ: «اطْلُبُوهُ، وَاقْتُلُوهُ». فَتَلَّاهُ، فَتَلَّاهُ
سَلَبَهُ

“A spy from the infidels came to the Prophet ﷺ while he was on a journey. The spy sat with the Companions of the Prophet,

started talking, and then went away. The Prophet ﷺ said, ‘Catch him and kill him.’ So I killed him.” (His son narrates) “The Prophet ﷺ then gave him the belongings of the killed spy (in addition to his share of the *Ghanimah*).”⁵⁰¹

Muslim رحمه الله also narrates from him رَضِيَ اللهُ عَنْهُ in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (1754):

غَزَوْنَا مَعَ رَسُولِ اللَّهِ ﷺ هَوَازِينَ، فَبَيْنَا نَحْنُ نَتَضَحَّى مَعَ رَسُولِ اللَّهِ ﷺ إِذْ جَاءَ رَجُلٌ عَلَى جَمَلٍ أَحْمَرَ، فَأَنَاحَهُ، ثُمَّ انْتَرَعَ طَلْقًا مِنْ حَقَبِهِ، فَقَبِدَ بِهِ الْجَمَلَ، ثُمَّ تَقَدَّمَ يَتَغَدَّى مَعَ الْقَوْمِ، وَجَعَلَ يَنْظُرُ وَفِينَا ضَعْفَةٌ وَرِقَّةٌ فِي الظَّهْرِ، وَبَعْضُنَا مُشَاةٌ، إِذْ خَرَجَ يَشْتَدُّ، فَأَتَى جَمَلَهُ، فَأَطْلَقَ قَيْدَهُ ثُمَّ أَنَاحَهُ، وَقَعَدَ عَلَيْهِ، فَأَثَارَهُ فَاشْتَدَّ بِهِ الْجَمَلَ، فَاتَّبَعَهُ رَجُلٌ عَلَى نَاقَةٍ وَرَفَاءٍ، قَالَ سَلَمَةٌ: وَخَرَجْتُ أَشْتَدُّ فَكُنْتُ عِنْدَ وَرِكَ النَّاقَةِ، ثُمَّ تَقَدَّمْتُ حَتَّى كُنْتُ عِنْدَ وَرِكَ الْجَمَلِ، ثُمَّ تَقَدَّمْتُ حَتَّى أَخَذْتُ بِخَطَامِ الْجَمَلِ فَأَنَاحْتُهُ، فَلَمَّا وَضَعَ رُكْبَتَهُ فِي الْأَرْضِ اخْتَرَطْتُ سَيْفِي، فَضَرَبْتُ رَأْسَ الرَّجُلِ، فَندَرَ، ثُمَّ جِئْتُ بِالْجَمَلِ أَقُوْدُهُ عَلَيْهِ رَحْلُهُ وَسِلَاحُهُ، فَاسْتَقْبَلَنِي رَسُولُ اللَّهِ ﷺ وَالنَّاسُ مَعَهُ، فَقَالَ: «مَنْ قَتَلَ الرَّجُلَ؟» قَالُوا: ابْنُ الْأَكْوَعِ، قَالَ: «لَهُ سَلْبُهُ أَجْمَعُ»

“We fought the battle of Hawāzin along with the Messenger of Allāh ﷺ. (One day) when we were having breakfast with the Messenger of Allāh ﷺ a man came riding a red camel. He made it kneel down, extracted a strip of leather from its girth, and tethered the camel with it. Then he began to eat with the people and look (curiously) around. We were in a poor condition as some of us were on foot (being without any mounts). All of a sudden, he hurriedly left us, went to his camel, untied it, made it kneel, mounted it, and then proceeded to speed off. A man on a

⁵⁰¹ Also recorded in *Sunan Abī Dāwūd: The Book of Jihād* (2653)

brown she-camel gave chase (assuming him to be a spy). I followed on foot running until I neared the thigh of the she-camel. I kept running until I caught hold of its nose string, thereupon I made it kneel. As soon as it placed its knee on the ground, I drew my sword and struck the head of the rider, who fell (dead). I returned with the camel, the man's baggage, and his weapons. The Messenger of Allāh ﷺ came forward accompanied by people to meet me. He asked, 'Who killed the man?' The people replied, 'ibn al-Akwa'.' He said, 'Everything from the man is for him.'"

In his commentary on *Ṣaḥīḥ Muslim* (4/1836), an-Nawawī رحمه الله says, "In it (i.e. the previous narration) is the ruling, **according to the consensus of the Muslims, the disbelieving Harbī spy is to be executed**. In an-Nasā'ī's رحمه الله version (of the narration), 'the Prophet ﷺ ordered the spy be tracked down and killed.'"

Accordingly, these and other similar narrations provide the basis for the execution of the *Harbī* spy, and as an-Nawawī رحمه الله highlighted, there is no difference amongst the scholars regarding the issue.

حكم الجاسوس المسلم

THE RULING REGARDING THE MUSLIM SPY

Scholars have differed over the ruling of the Muslim spy; meaning the Muslim that spy's on the Muslims on behalf of the disbelievers. There are five opinions regarding his ruling:

The **first** is that he is not to be killed, but rather, he should be subjected to a discretionary punishment.⁵⁰² This view was held

⁵⁰² (التعزير) As such, the *Imām* has the discretion to choose the manner in which the offender is to be punished. Usually, Discretionary punishments do

by the Ḥanafī and ash-Shāfi’ī schools, and is apparently the opinion of the Ḥanbalī school.

Abū Yūsuf رَحِمَهُ اللهُ said, addressing the caliph Harūn ar-Rashīd رَحِمَهُ اللهُ, “You asked, O Leader of the believers, regarding the spies [...]; if they are known to be from the Muslims, then punish them severely and imprison them until they repent.”⁵⁰³

It is stated in *Sharḥ as-Siyar al-Kabīr* (1/204), “If the Muslims discover a man professing Islām spying on behalf of the polytheists and conveying the Muslim’s secrets to them, and he admits this willingly, he should not be executed. Rather he should be dealt a painful punishment by the *Imām* [...] The evidence for this is contained in the narration (of the incident) wherein Ḥātib ibn Abī Balta’ah رَحِمَهُ اللهُ wrote to the Quraysh warning them of the Messenger of Allāh’s ﷺ intention to attack them [...] until the Messenger of Allāh ﷺ said to ‘Umar رَحِمَهُ اللهُ:

مَهْلًا يَا عُمَرُ فَلَعَلَّ اللَّهَ قَدْ أَطَّلَعَ عَلَى أَهْلِ بَدْرٍ فَقَالَ: اْعْمَلُوا مَا شِئْتُمْ
فَقَدْ غَفَرْتُ لَكُمْ

‘What do you know O ‘Umar, perhaps Allāh has forgiven the people of Badr and said, **“Do as you please, for I have indeed forgiven you all.”**’⁵⁰⁴

Therefore if he, by his action, had become a disbeliever it would have been obligatory to kill him, and the Messenger of Allāh ﷺ

not surpass the level of the least severe Prescribed punishment (الحد). Although there are among the scholars, such as those from the Mālikī school, that hold that, if warranted, execution may be used as a Discretionary punishment (and anything less than it)

⁵⁰³ *Al-Kharāj*, (pgs.205&206)

⁵⁰⁴ Similar narrations are also in *Ṣaḥīḥ al-Bukhārī: The Book of Military Expeditions Led by the Prophet* (3983), *Ṣaḥīḥ Muslim: The Book of Virtues of the Companions* (2494), *Sunan Abī Dāwūd: The Book of Jihād* (2650), and *Jāmi’ at-Tirmidhī: Chapters on Tafsīr* (3305)

would not have left him, whether or not he attended Badr. Likewise, if had of been obligatory upon the Messenger of Allāh ﷺ to execute him as a Prescribed Punishment (*Hadd*), there would have been no way he would of excused him without carrying it out.”⁵⁰⁵

In *al-Umm* (4/264) ash-Shāfi'ī رحمه الله says, “The blood of the one it has been established is protected due to his Islām, is not permitted except if he commits Murder; fornicates after having (once) been married; or commits clear-cut disbelief after having believed, and then remains firm upon it (i.e. he does not repent).⁵⁰⁶ (However, it is not permitted to kill him) for exposing the secrets of the Muslims, or for helping a disbeliever by warning him that the Muslims intend to deceive him, so he may take precautions against it, or (pre-emptively) assault the Muslims.”

⁵⁰⁵ In support of this is the following narration in *Ṣaḥīḥ al-Bukhārī: The Book of Limits and Punishments Set by Allāh* (6787) wherein ‘Ā’ishah رضي الله عنها narrated:

أَنَّ أُسَامَةَ كَلَّمَ النَّبِيَّ ﷺ فِي امْرَأَةٍ، فَقَالَ: «إِنَّمَا هَلَكَ مَنْ كَانَ قَبْلَكُمْ، أَنَّهُمْ كَانُوا يُقِيمُونَ الْحَدَّ عَلَى الْوَضِيعِ وَيَتْرُكُونَ الشَّرِيفَ، وَالَّذِي نَفْسِي بِيَدِهِ، لَوْ أَنَّ فَاطِمَةَ فَعَلَتْ ذَلِكَ لَقَطَعْتُ يَدَهَا»

Usāmah approached the Prophet ﷺ on behalf of a woman (who had committed theft). The Prophet said, ‘The people before you were destroyed because they used to inflict the legal punishments on the poor and forgive the rich. By Him in Whose Hand my soul is! If Fāṭimah (the daughter of the Prophet ﷺ) did that (i.e. stole), I would cut off her hand.’”

⁵⁰⁶ This is in reference to the *Ḥadīth* recorded in *Ṣaḥīḥ al-Bukhārī: The Book of Blood Money* (6878) in which the Prophet ﷺ said:

لَا يَجِلُّ دَمُ امْرِئٍ مُسْلِمٍ، يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ، إِلَّا بِأَحَدٍ ثَلَاثٍ: النَّفْسُ بِالنَّفْسِ، وَالزَّانِيَةُ الزَّانِي، وَالْمَارِقُ مِنَ الدِّينِ التَّارِكُ لِلْجَمَاعَةِ

“The blood of the Muslim who testifies that there is no deity worthy of worship except Allāh is not permissible, except in one of three cases: A life for a life (i.e. Murder), the adulterer, and the one who abandons the religion and separates from the Jamā’ah (i.e. the main body of Muslims).”

An-Nawawī رحمه الله says in *al-Minhāj* (4/1836), “As for the Muslim spy, then ash-Shāfi’ī, al-Awzā’ī, Abū Ḥanīfah, and some of the Mālikī, along with the majority of scholars رحمه الله say that the *Imām* has the discretion to decide between (a range of punishments, such as) beating, imprisonment, and their likes. However, it is not permissible to kill him.”

In *Majmū’ al-Fatāwā* (28/345) ibn Taymiyyah رحمه الله mentions, “It has been reported from Mālik and other than him, that from the crimes that’s (punishments) do not reach the level of execution are the likes of the Muslim spying for the enemy against the Muslims. This is also the view of a number of Aḥmad’s companions; however Aḥmad himself was undecided concerning whether or not he should be executed. (Nevertheless) Mālik along with some of the Ḥanbalī’s, such as al-Qāḍī Abī Ya’lā, permitted execution.”

Ibn Qayyim رحمه الله says in *Zād al-Ma’ād* (2/209&210), “(According to) ash-Shāfi’ī, Abū Ḥanīfah, and what seems apparent from Aḥmad, is that he should not be killed. The **second** opinion states that it *Wājib*, without exception, to kill the Muslim spy. As-Suḥnūn رحمه الله states, ‘If the Muslim writes to the *Ahl al-Ḥarb* he should be killed without being asked to repent, and his wealth is to be distributed amongst his heirs.’”

Ibn Qayyim likewise narrates from ibn al-Qāsim رحمه الله (3/41) saying, “He should be executed, and being asked to repent is not known for him, as he is a *Zindīq*.”⁵⁰⁷

Al-Kharshī رحمه الله says in *Sharḥ Mukhtaṣar Khalīl* (3/119), “It is widely known that if it becomes evident that the Muslim is a spy

⁵⁰⁷ The *Zindīq* (الزندیق) is like the *Munāfiq* - the one who displays Islām while concealing disbelief. However unlike the *Munāfiq*, the *Zindīq*’s disbelief has become exposed, through word or deed. Nevertheless, he/she refuses to acknowledge their *Nifāq* and that they have committed an act of disbelief, rather they instead insist they are a believer

for the enemy, his ruling becomes that same as that of the *Zindīq*. Meaning, he should be killed if exposed and repentance is not accepted from him. This was (also) the opinion of al-Qāsim and Suḥnūn.”

The **third** opinion, held by adherents to the Mālikī School, argues that if apprehended before his repentance is apparent, or if spying has become habitual for him (i.e. it was not just a one-off incident), it is *Wājib* to kill him.

In *Minah al-Jalīl* (3/163) it states, “The Muslim spy is like the *Zindīq* - the one who exhibits Islām but conceals disbelief - as such, he is to be killed even if he shows signs of repentance after his capture. However if apparent prior to his discovery, his repentance should be accepted.”

Similarly, it is stated in *Sharḥ al-Kabīr* (2/182), “The Muslim spy is like the *Zindīq* - he is executed if discovered and his repentance is not accepted. Although, if he presents himself voluntarily in a state of repentance, it is accepted from him (and he is not executed).”

An-Nawawī quotes al-Qāḍī ‘Iyyād رَحِمَهُ اللهُ in *al-Minhāj* (4/1836) as saying, “The greatest (scholars of the *Madhhab*) said he should be executed. However, they differ as to leaving him if he repents.”

The **fourth** opinion, held by ‘Abd al-Mālik ibn Mājushūn رَحِمَهُ اللهُ from the Mālikī School and those whom follow him, contends that the Muslim spy is only to be executed if spying has become routine for him.

Ibn al-‘Arabī al-Mālikī رَحِمَهُ اللهُ narrates in *Aḥkām al-Qur’ān* (4/225), “Ibn Mājushūn said, ‘If that is his custom, then he should be executed as he is (truly) a spy.’”

In his *Tafsīr* (9/307), al-Qurṭubī رحمه الله remarks, “Perhaps ibn Mājushūn, and Allāh knows best, only (stipulated this for) the repeat offender, as Ḥātib (رضي الله عنه) was dealt with (in such a fashion) (i.e. he was not executed) due to it being the first (and only) time he did such an action.”

While the **fifth** position maintains that executing the Muslim spy is permissible, however it is not *Wājib*. As such, the decision rests upon the discretion of the *Imām*.

Ibn al-‘Arabī رحمه الله says in *Aḥkām al-Qur’ān* (4/225), “The one who frequently seeks out the secrets of the Muslims, warns (their enemy’s) against them, and informs them about the Muslims affairs, is not due to this, a disbeliever if his intention was because of a worldly matter while his belief remained intact. Such as the actions of Ḥātib ibn Abī Balta’ah (رضي الله عنه) when he sought (to protect his family) and not apostasy from the religion [...]. If we say this was indeed not an act of apostasy [...] (the question remains) should the spy be executed as a Prescribed Punishment (*Hadd*), or not?

Mālik said, ‘It is at the *Imām*’s discretion.’ [...] While he also stated correctly, the (professional) spy should be killed due to his detriment to the Muslims, and his spreading of corruption.”⁵⁰⁸

Shaykh al-Islām ibn Taymiyyah رحمه الله also affirms this in *Majmū’ al-Fatāwā* (35/405) stating, “It is permissible to execute the Muslim spy due to the benefit it entails for the Muslims. This was the view of Mālik and a number of the companions of *Imām* Aḥmad, such as ibn ‘Aqīl.”

Advocates of this opinion rely upon for evidence, that which has been related by al-Bukhārī رحمه الله in his *Ṣaḥīḥ: The book of Asking Permission* (6259), and Muslim رحمه الله in his *Ṣaḥīḥ: The Book of the Merits of the Companions* (2494) from ‘Alī (رضي الله عنه) who said:

⁵⁰⁸ Also refer to the commentary of *Sūrah al-Mumtaḥinah* (60:1) in *al-Jāmi’ li’Aḥkām al-Qur’ān* (9/306)

بَعَثَنِي رَسُولُ اللَّهِ ﷺ وَالزُّبَيْرُ بْنُ الْعَوَّامِ وَأَبَا مَرْثَدَ الْعَنَوِيِّ، وَكُلُّنَا فَارِسٌ، فَقَالَ: «انْطَلِقُوا حَتَّى تَأْتُوا رَوْضَةَ خَاخٍ»، فَإِنَّ بِهَا امْرَأَةً مِنَ الْمُشْرِكِينَ، مَعَهَا صَحِيفَةٌ مِنْ حَاطِبِ بْنِ أَبِي بَلْتَعَةَ إِلَى الْمُشْرِكِينَ، قَالَ: فَأَذْرَكْنَاهَا تَسِيرُ عَلَى جَمَلٍ لَهَا حَيْثُ قَالَ لَنَا رَسُولُ اللَّهِ ﷺ، قَالَ: قُلْنَا: أَيْنَ الْكِتَابُ الَّذِي مَعَكَ؟ قَالَتْ: مَا مَعِيَ كِتَابٌ، فَأَنْخَنَّا بِهَا، فَأَبْتَعَيْنَا فِي رَحْلِهَا فَمَا وَجَدْنَا شَيْئًا، قَالَ صَاحِبَايَ: مَا نَرَى كِتَابًا، قَالَ: قُلْتُ: لَقَدْ عَلِمْتُ مَا كَذَبَ رَسُولُ اللَّهِ ﷺ، وَالَّذِي يُحْلَفُ بِهِ، لَتُخْرِجَنَّ الْكِتَابَ أَوْ لَا جَرْدَنَكَ، قَالَ: فَلَمَّا رَأَتْ الْجِدَّ مِنِّي أَهَوَتْ بِيَدِهَا إِلَى حُجْرَتِهَا، وَهِيَ مُحْتَجِزَةٌ بِكِسَاءٍ، فَأَخْرَجَتِ الْكِتَابَ، قَالَ: فَانْطَلَقْنَا بِهِ إِلَى رَسُولِ اللَّهِ ﷺ، فَقَالَ: «مَا حَمَلَكَ يَا حَاطِبُ عَلَى مَا صَنَعْتَ» قَالَ: مَا بِي إِلَّا أَنْ أَكُونَ مُؤِمِّنًا بِاللَّهِ وَرَسُولِهِ، وَمَا غَيَّرْتُ وَلَا بَدَّلْتُ، أَرَدْتُ أَنْ تَكُونَ لِي عِنْدَ الْقَوْمِ يَدٌ يَدْفَعُ اللَّهُ بِهَا عَنْ أَهْلِي وَمَالِي، وَلَيْسَ مِنْ أَصْحَابِكَ هُنَاكَ إِلَّا وَلَهُ مَنْ يَدْفَعُ اللَّهُ بِهِ عَنْ أَهْلِهِ وَمَالِهِ، قَالَ: «صَدَقَ، فَلَا تَقُولُوا لَهُ إِلَّا خَيْرًا» قَالَ: فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: إِنَّهُ قَدْ خَانَ اللَّهَ وَرَسُولَهُ وَالْمُؤْمِنِينَ، فَدَعْنِي فَأَضْرِبْ عُنُقَهُ، قَالَ: فَقَالَ: " يَا عُمَرُ، وَمَا يُدْرِيكَ، لَعَلَّ اللَّهَ قَدْ أَطْلَعَ عَلَى أَهْلِ بَدْرٍ فَقَالَ: اْعْمَلُوا مَا شِئْتُمْ، فَقَدْ وَجَبَتْ لَكُمْ الْجَنَّةُ " قَالَ: فَدَمَعَتْ عَيْنَا عُمَرَ وَقَالَ: اللَّهُ وَرَسُولُهُ أَعْلَمُ

‘Allāh’s Messenger ﷺ sent me, az-Zubayr ibn al-‘Awwām, and Abū Marthad al-Ghanawī, all of us mounted, and said, ‘Proceed until you reach Rawḍah al-Khākh where there will be a woman from the pagans carrying a letter sent by Ḥātib ibn Abī Balta’ah to the pagans (of Makkah).’⁵⁰⁹ So we overtook her as she rode on her camel in the same place as the Messenger of Allāh ﷺ had told us. We said (to her), ‘Where is the letter which is with you?’ She replied, ‘I have no letter.’ Therefore, we made her camel

⁵⁰⁹ The contents of this letter, as related by al-Qurṭubī, is mentioned on (p.431)

kneel and searched her baggage but could not find anything. My two companions said, ‘We do not see any letter,’ however I replied, ‘I know the Messenger of Allāh did not lie. By Allāh, if you do not disclose the letter, I will strip you naked (in order to find it).’ When she realised I was serious, she reached into the knot of her waist sheet, for she was wearing a sheet around herself, and produced the letter.

The Prophet ﷺ asked, ‘What made you do what you did O Ḥātib?’ He replied, ‘I did not do so, except that I (still) believe in Allāh and His Messenger, and have not changed (my religion). However, I wanted to do a favour for the people (of Makkah) through which Allāh might protect my family and property, as there is none amongst your companions except that he has someone in Makkah through whom Allāh protects his property (against harm).’ The Prophet ﷺ said, ‘Ḥātib has told you the truth, so do not say to him but good.’ ‘Umar ibn al-Khaṭṭāb said, ‘Verily he has betrayed Allāh, His Messenger, and the believers! Permit me to strike his neck!’ The Prophet ﷺ responded, ‘O ‘Umar! What do you know, perhaps Allāh looked upon the people of Badr and said, **“Do whatever you like, for I have ordained that you will inhabit Paradise.”**’ Upon (hearing) this, ‘Umar wept saying, ‘Allāh and His Messenger know better (than me).’”⁵¹⁰

Al-Ḥāfidh ibn Ḥajar رَحِمَهُ اللهُ commented in *Fath al-Bārī* (7/635), “‘Umar’s seeking permission to kill Ḥātib establishes the permissibility of killing the spy, even if he is a Muslim, and this is the opinion of Mālik and those in agreement with him. This (position) is from the aspect of the Messenger ﷺ (implicitly) approving of ‘Umar’s intention to execute (Ḥātib), although (he

⁵¹⁰ Also in *Sunan Abī Dāwūd: The Book Jihād* (2651), and classified as *Ṣaḥīḥ* by al-Albānī, it states that ‘Alī رَحِمَهُ اللهُ said to the woman, “By Him in Whose name oaths are taken, if you do not disclose the letter I will certainly kill you!” Al-Qurṭubī mentions in his *Tafsīr* that the Prophet ﷺ ordered, “If she does not hand it over to you (i.e. the letter), strike her neck! (i.e. kill her).”

was not permitted to) due to the existence of a preventative factor - Ḥātib's participation at Badr. A factor that is not possible for anyone other than Ḥātib (i.e. anyone that did not participate at Badr). Likewise, if Islām itself was a (valid) factor preventing him from being executed, then why did Ḥātib explain (his reasons) specifically?"

In *Zād al-Ma'ād* (2/209&210) ibn Qayyim رَحِمَهُ اللهُ says, "Contained within it (i.e. the *Hadīth* of Ḥātib رَحِمَهُ اللهُ) is the permissibility to kill the spy, even if he happens to be Muslim. As 'Umar asked the Messenger of Allāh's ﷺ permission to kill Ḥātib ibn Abī Balta'ah رَحِمَهُ اللهُ when he sent word to the people of Makkah. The Messenger of Allāh ﷺ did not say to him, 'It is not permissible to kill him as he is a Muslim.' Instead he said, 'What do you know, perhaps Allāh looked upon the people of Badr and said, **"Do whatever you like..."**' Thus, the Prophet ﷺ clarified the fact that his participation at Badr prevented his killing, and in this reply is an indication of the permissibility of killing the Muslim spy who does not have a preventative factor like that of Ḥātib's. This is the position of Mālik, and one of the reported positions from Aḥmad. However, ash-Shāfi'ī and Abū Ḥanīfah hold the Muslim spy should not be killed, and this is (also) apparently a position which Aḥmad held.⁵¹¹ Both parties rely upon the incident of Ḥātib as evidence (to support their positions). Nevertheless, what is correct is that the *Imām* has the choice whether to execute or not: If in his estimation execution is in the best interests of the Muslims, he should execute (the spy). While if the benefit of sparing him (outweighs that of execution) then he should not execute him, and Allāh knows best,"

In conclusion, it seems that if the Muslim spy's action does not result in the death of another Muslim(s), then as ibn Qayyim رَحِمَهُ اللهُ and others have stated, executing him is permissible (as he

⁵¹¹ Although this seems to be a contradiction, it was not unheard of that sometimes a scholar would initially hold one opinion on a given issue, and then later change it due to new knowledge coming to him

does not have the preventative factor of attending Badr as Ḥātib رضي الله عنه did), but not *Wājib*. Therefore, the leader is required to analyse the situation and act according to the best interests of the Muslims. However, if the spy's actions have resulted in the death of another Muslim, then he should be executed - if not as an act of *Qīṣāṣ* (Legal Retribution), then as a punishment and deterrent to others, according to the principle of 'preventing the evil.'⁵¹² As today, many of the Muslim spies are well aware that the information they relay to the disbelievers regarding the plans, whereabouts, and identities of the *Mujāhidīn*, are sought for no purpose other than to kill, or possibly to imprison and torture. This is not to mention the homing devices that their masters from the disbelievers have them plant in order to carry out their drone, air, and missile strikes on the scholars, preachers, and *Mujāhidīn* of the *Ummah*, which few can claim ignorance of.

In addition, and as mentioned by a number of scholars such as ibn al-Qāsim رحمته الله, and as indicated in Muslim's version of the *Ḥadīth* (2494), Ḥātib رضي الله عنه pled to the Prophet ﷺ, "I did not do so due to disbelief or apostasy, and I have no liking for disbelief after having embraced Islām." The act of spying against the Muslims on behalf of the disbelievers can indeed be an act of apostasy depending on the spy's motives and situation. For if this were not the case, then why would Ḥātib رضي الله عنه have felt the need to state that he did not act out of disbelief, but rather in order to achieve a worldly benefit? In addition, why would 'Umar have accused Ḥātib رضي الله عنه of hypocrisy (i.e. concealing disbelief) due to his actions? In addition to Ḥātib's justification, the contents of his intercepted letter to the Quraysh demonstrate, unlike many contemporary spies, that his actions, whilst against the Muslims were also a type of physiological warfare aimed at terrifying the

⁵¹² In Arabic this principle of *Fiqh* is known as (سد الذرائع), and means to prohibit an act which is in and of itself permissible due to a harm that it will likely lead to in a particular situation. An example being the prohibition of selling weapons to the criminal Muslim gang who, it is strongly suspected, will use such weapons to harm the Muslims

Quraysh into submission in the face of the impending Muslim offensive on Makkah. Al-Qurtubī رحمه الله in his *Tafsīr* of *Sūrah al-Mumtahinah* (9/305) mentions the contents of Hātib's رضي الله عنه letter: "To proceed: Indeed the Messenger of Allāh ﷺ with an army (vast) like the night which moves like a torrent is heading your way. And I swear by Allāh, that even if he alone marched towards you, Allāh would grant him victory over you and would fulfil his promise concerning (defeating) you, as Allāh is undoubtedly his Ally and Supporter."

Consequently, those who do not share Hātib's رضي الله عنه motive could indeed fall into apostasy due to their alliance and assisting the disbelievers against the Muslims, represented by their spying against the Muslims. Although there is no doubt that the Muslim spy falls into apostasy if their intentions for doing so are due to love for the disbelievers, a belief that what he is doing is justified, or a desire that they triumph over the Muslim 'extremists' and 'terrorists.' Shaykh ibn Bāzz رحمه الله said regarding such people in his *Majmū' al-Fatāwā* (1/274), "The Muslim scholars have agreed that whomsoever aided (supported) the infidels against the Muslims and helped them in any way, then he is an infidel just as they are." So how then about the ones who profess to believe it a religious (or patriotic) obligation, or a duty as a citizen in the lands of the disbelievers, to aid them by passing information about the *Mujāhidīn* to their police, military, and counter-terrorism branches? Thus, such individuals should undoubtedly be executed, for they have combined the crime of spying with the even greater crime of Aggravated Apostasy, and Allāh ﷻ knows best.⁵¹³

⁵¹³ This clear misguidance and treachery is unfortunately an underpinning call of a number of deviant sects ascribing themselves to 'Salafiyyah'. Whereas, as the evidence and words of the actual *Salaf* (and their followers) indicate, true *Salafiyyah* has nothing whatsoever to do with the corrupted actions of such criminals - and may Allāh guide their sincere but unfortunately ignorant followers, and expose their shameless 'scholars' and 'preachers'

Finally, as mentioned by a number of contemporary scholars such as Shaykh Abū Yaḥyā al-Lībī رحمه الله, the type of spying that was spoken about by the scholars of the past - when they based their chapters and discussions regarding the Muslim spy on the incident of Ḥātib رحمه الله, is in no way, shape, or form, the same as what the *Ummah* is currently witnessing. Rather, today's spy is an integral part of the disbelievers' war against Islām, and the *Mujāhidīn* in particular, as their multi-billion dollar drone, and precision-guided missile programme is only possible with the 'help' of these spies. They plant tracking and homing devices, confirm the identities of suspects, give times and locations of meetings, and so on, for the drones, warjets, bombers, and battleships to direct their strikes. As such, any attempt to justify dealing with today's spies as the Prophet ﷺ dealt with Ḥātib رحمه الله is incorrect to say the least; rather their differences are like night and day! Al-Lībī رحمه الله says, concluding on his work dedicated to the subject, *al-Mu'lim* (pgs.147&148):

“The work of contemporary spies is not confined to merely conveying information (to the disbelievers) via writing, messaging, communicating (via phones, etc.), or images. Rather, it amounts to physically participating in their campaign by using various types of technology, such as microchips that direct missiles to their targets, and accompanying and guiding ground and air raids, and other such activities [...].

Supporting the disbelievers and assisting them, with any type of assistance, against the Muslims is, according the consensus of the scholars, *Major Kufr* exiting one from the religion. Declaring them apostates is not impeded because supporting is (usually) built upon a love for their religion (i.e. disbelief) and a desire for them to be superior [...].

From the forms spying takes is that which amounts to the type of supporting (the disbelievers) which exits its doer from Islām, and is done by conveying information

regarding the Muslims to the disbelievers in order to assist them in their war against Islām and the Muslims [...].

The spies who profess Islām are of two types: The **first** is the one whose assistance of the disbelievers against the Muslims is clear-cut, and clearly falls within the support (that amounts to disbelief) and as such, he is an apostate. His ruling, with respect to whether or not he is executed, is the same as the *Zindīq*: If he, before he is apprehended, repents, then his repentance is accepted. However, if not, then he is to be executed except if a greater benefit is to be obtained by sparing and freeing him under supervision. The **second** is the one whose spying is not clear-cut in its support (of the disbelievers against the Muslims), thus (the leader) should choose a fitting punishment for his crime, which may still reach the level of execution as a discretionary punishment (*Ta'zīr*) [...].

All of the above is concerning the captured spy whose guilt has been established and is under the authority of the *Mujāhidīn*. However, the one who resists using force, and whose evil cannot be repelled except by killing him should be killed regardless of what type he falls into.”

حكم الجاسوس المعاهد والذمي THE RULING REGARDING THE DISBELIEVING SPY WITH A COVENANT

As in the case of the Muslim spy, the scholars also differ over the case of the *Mu'āhid* or *Dhimmī* spy, holding two opinions on the issue:

The **first** holds that it is *Wājib* to execute them, and is the opinion of the Mālikī School, Abū Yūsuf (the companion of Abū Ḥanīfah رَحْمَهُمُ اللَّهُ), and likewise there are numerous statements from Ḥanbalī scholars echoing this stance.

In *al-Kharāj* (p.205) Abū Yūsuf said, addressing Harūn ar-Rashīd رَحْمَهُمُ اللَّهُ, “You asked, O *Amīr al-Mu'minīn*, regarding spies [...] If they are from *Ahl al-Ḥarb* or from *Ahl adh-Dhimma* - the Jews, Christians, and Magians who pay the *Jizyah* - strike their necks (i.e. execute them).”

Al-Qurṭubī and ibn al-‘Arabī رَحْمَهُمُ اللَّهُ say in their commentaries, “The *Ḥarbī* spy should be killed, while the Muslim and *Dhimmi* (spies) should be punished, except if they support (the disbelievers) against Islām; in which case they should (also) be executed.”⁵¹⁴

In *at-Tāj wa 'l-Iklīl* (3/385) Suḥnūn رَحْمَهُمُ اللَّهُ says, “If we discover in the lands of the Muslim’s a *Dhimmi* communicating classified information to the disbelievers, he should be executed as a deterrent to others.”

Ibn Qudāmah رَحْمَهُمُ اللَّهُ says in *al-Mughnī* (9/354), “Regarding the affair (of the one who betrays his covenant betraying its terms, thus permitting his blood and wealth) [...] al-Qāḍī and ash-Sharīf Abū Ja'far point out that there are two aspects related to the conditions (of the covenant). The first is that he can breach the terms of his pledge by engaging in any one of ten matters:

- 1) Refusing to pay the *Zakāh*
- 2) Attempting to evade our judgement concerning him if he is found guilty (of a crime) by a judge
- 3) Conspiring to kill a Muslim
- 4) Committing *Zinā* (fornication) with a Muslim woman
- 5) Doing the same under the guise of ‘marriage’

⁵¹⁴ Refer to *Aḥkām al-Qur'ān* (4/226) and *Jāmi' li 'Aḥkām al-Qur'ān* (9/307)

- 6) Subjects a Muslim to trial (i.e. *Fitnah*) with regards to his religion
- 7) Commits banditry and murder
- 8) Harbours a spy from amongst the polytheists
- 9) Cooperates with the disbelievers against the Muslims by physically leading, or directing them to the Muslims secrets
- 10) Mentions Allāh, His book, His religion or His Messenger ﷺ in an ill-mannered fashion

As for the first two instances, according to our school, there is no disagreement that they are a breach of covenant, having the same result as fighting against the Muslims, either with the disbelievers or alone. As these things, without exception, are breaches of covenant. Therefore, if they do these actions it is *Wājib* upon us to fight them.

As for the rest of the conditions, there are two reports concerning them; the first is that their covenant is nullified whether or not these things were (explicitly) included as conditions. However, the second holds that they do not nullify their covenant (unless they have been previously stated in their covenant)."

He continues, "Therefore, if he does something that requires a Prescribed Punishment or *Qiṣāṣ* then it should be applied to him. However, if his actions do not reach to the level of the Prescribed Punishment, he should be reprimanded and dealt with in such a way as to deter others. Thus, if anyone else wishes to emulate his actions he should be prevented. However, if he tries to resist using force then this invalidates his covenant.

We have ruled that whoever from them breaches his covenant is subject to the *Imām's* discretion. He may choose to execute, enslave, ransom or free; in the same way as we deal with the *Harbī* prisoner we have overcome in our lands, who, no doubt does not possess a covenant or treaty." ⁵¹⁵

⁵¹⁵ *Al-Mughnī* (7686)

In his commentary on *Ṣaḥīḥ Muslim* (4/1836), an-Nawawī رَحِمَهُ اللهُ says, “As for the *Mu’āhid* or *Dhimmī* spy, Mālik and al-Awzā’ī state that they have nullified their covenants, and as such the *Imām* can choose to enslave, while also being permissible is to kill them. Although the majority of the scholars hold they have not invalidated their covenants with the likes of that, with our companions saying, ‘unless it was initially a condition in their covenant (i.e. not to spy against the Muslims).’”

Evidence for those who deem the *Mu’āhid* or *Dhimmī* spy should be killed is contained within the narration in *Sunan Abī Dāwūd: The Book of Jihād* (2652), in which Furāt ibn Ḥayyān رَضِيَ اللهُ عَنْهُ related that:

أَنَّ رَسُولَ اللَّهِ ﷺ أَمَرَ بِقَتْلِهِ، وَكَانَ عَيْنًا لِأَيِّ سُفْيَانَ، وَحَلِيفًا لِرَجُلٍ مِنَ الْأَنْصَارِ، فَمَرَّ بِحَلَقَةٍ مِنَ الْأَنْصَارِ فَقَالَ: إِنِّي مُسْلِمٌ. فَقَالَ رَجُلٌ مِنَ الْأَنْصَارِ: يَا رَسُولَ اللَّهِ، إِنَّهُ يَقُولُ: إِنِّي مُسْلِمٌ فَقَالَ رَسُولُ اللَّهِ ﷺ: إِنَّ مِنْكُمْ رَجُلًا نَكَلَهُمْ إِلَى إِيْمَانِهِمْ، مِنْهُمْ فُرَاتُ بْنُ حَيَّانَ

“The Messenger of Allāh commanded to kill him; and he was a spy belonging to Abū Sufyān, and an ally of a man from the *Anṣār*. He passed by a circle of the *Anṣār* and said, ‘I am a Muslim.’ I man from the *Anṣār* said, ‘Messenger of Allāh, he is saying he is a Muslim.’ The Messenger of Allāh ﷺ then said, ‘There are people amongst you in whose faith we trust; Furāt ibn Hayyān is one of them.’”⁵¹⁶

Abū Dāwūd رَحِمَهُ اللهُ mentioned the above narration in the chapter: *Regarding the Dhimmī Spy*, indicating the *Dhimmī* spy should be executed as was ordered by the Prophet ﷺ; however, Furāt رَضِيَ اللهُ عَنْهُ was only spared due to his embracing Islām, which wipes out all sins prior to it, and likewise their punishments.

⁵¹⁶ Al-Albānī رَحِمَهُ اللهُ declared the narration to be *Ṣaḥīḥ* in his *Ṣaḥīḥ Abī Dāwūd* (2382)

In the following chapter: *Regarding the Spy Who Was Given a Covenant of Security*, Abū Dāwūd رحمته الله reports in his *Sunan: The Book of Jihād* (2654) indicating that the *Musta'man* (disbeliever given a covenant of security) should be executed if he spies against the Muslims. Salamah ibn al-Akwa' رحمته الله narrates:

غَزَوْنَا مَعَ رَسُولِ اللَّهِ ﷺ هَوَازِينَ، فَبَيْنَا نَحْنُ نَتَضَحَّى مَعَ رَسُولِ اللَّهِ ﷺ إِذْ جَاءَ رَجُلٌ عَلَى جَمَلٍ أَحْمَرَ، فَأَنَاحَهُ، ثُمَّ انْتَرَعَ طَلْقًا مِنْ حَقَبِهِ، فَقَيْدَ بِهِ الْجَمَلِ، ثُمَّ تَقَدَّمَ يَتَعَدَّى مَعَ الْقَوْمِ، وَجَعَلَ يَنْظُرُ وَفِينَا ضَعْفَةٌ وَرَقَّةٌ فِي الظَّهْرِ، وَبَعْضُنَا مُشَاةٌ، إِذْ خَرَجَ يَشْتَدُّ، فَأَتَى جَمَلَهُ، فَأَطْلَقَ قَيْدَهُ ثُمَّ أَنَاحَهُ، وَقَعَدَ عَلَيْهِ، فَأَثَارَهُ فَاشْتَدَّ بِهِ الْجَمَلُ، فَاتَّبَعَهُ رَجُلٌ عَلَى نَاقَةٍ وَرَقَاءَ، قَالَ سَلَمَةُ: وَخَرَجْتُ أَشْتَدُّ فَكُنْتُ عِنْدَ وَرِكِ النَّاقَةِ، ثُمَّ تَقَدَّمْتُ حَتَّى كُنْتُ عِنْدَ وَرِكِ الْجَمَلِ، ثُمَّ تَقَدَّمْتُ حَتَّى أَخَذْتُ بِخِطَامِ الْجَمَلِ فَأَنَخْتُهُ، فَلَمَّا وَضَعَ رُكْبَتَهُ فِي الْأَرْضِ اخْتَرَطْتُ سَيْفِي، فَضَرَبْتُ رَأْسَ الرَّجُلِ، فَنَدَرَ، ثُمَّ جِئْتُ بِالْجَمَلِ أَقْوَدُهُ عَلَيْهِ رَحْلُهُ وَسِلَاحُهُ، فَاسْتَقْبَلَنِي رَسُولُ اللَّهِ ﷺ وَالنَّاسُ مَعَهُ، فَقَالَ: «مَنْ قَتَلَ الرَّجُلَ؟» قَالُوا: ابْنُ الْأَكْوَعِ، قَالَ: «لَهُ سَلْبُهُ أَجْمَعُ»

“We fought the battle of Hawāzin along with the Messenger of Allāh ﷺ. (One day) when we were having breakfast with the Messenger of Allāh ﷺ a man came riding a red camel. He made it kneel down, extracted a strip of leather from its girth, and tethered the camel with it. Then he began to eat with the people and look (curiously) around. We were in a poor condition as some of us were on foot (being without any mounts). All of a sudden, he hurriedly left us, went to his camel, untied it, made it kneel, mounted it, and then proceeded to speed off. A man on a brown she-camel gave chase (assuming him to be a spy). I followed on foot running until I neared the thigh of the she-camel. I kept running until I caught hold of its nose string, thereupon I made it kneel. As soon as it placed its knee on the

ground, I drew my sword and struck the head of the rider, who fell (dead). I returned with the camel, the man's baggage, and his weapons. The Messenger of Allāh ﷺ came forward accompanied by people to meet me. He asked, 'Who killed the man?' The people replied, 'ibn al-Akwa'.' He said, 'Everything from the man is for him.'”⁵¹⁷

Therefore, in light of the absence of narrations which indicate the aforementioned spies had contracts stipulating they would not spy on the Muslims, it would appear the disbeliever should be executed if he engages in espionage, even if his blood was originally protected by a covenant. Additionally, as mentioned in the previous section regarding the Muslim spy, the overall context must be taken into account when ruling in the case of the spy. Accordingly, as the two previous narrations in which the Prophet ﷺ instantly ordered the execution of the disbelieving spies, today's state of war cannot be ignored. Almost two decades into the latest manifestation of an age-old crusade against Islām, spying has become one of the disbeliever's most critical requirements in their drone, airstrike, and missile campaign against the *Mujāhidīn*. For that reason - and Allāh knows best - today's spy should be considered as an enemy combatant, directly contributing towards the disbelievers' efforts to ***extinguish the light of Allāh with their mouths, but Allāh refuses except to perfect His light, although the disbelievers dislike it.***⁵¹⁸

⁵¹⁷ Also narrated in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1754), and the above wording was his. Additionally by an-Nasā'ī in *al-Kubrā* (8624)

⁵¹⁸ In reference to the noble verse (9:32), wherein Allāh says:

﴿يُرِيدُونَ أَن يُطْفِئُوا نُورَ اللَّهِ بِأَفْوَاهِهِمْ وَيَأْبَى اللَّهُ إِلَّأ أَن يُتِمَّ نُورُهُ وَلَوْ كَرِهَ الْكَافِرُونَ﴾^(٣٢)

They want to extinguish the light of Allāh with their mouths, but Allāh refuses except to perfect His light, although the disbelievers dislike it.

CHAPTER SUMMARY

Allāh ﷻ prohibited the believers from spying against one another with His noble words in *Sūrah al-Hujurāt* (49:12):

﴿وَلَا تَجَسَّوْا﴾

And do not spy

The 'enemy' spy can be described as the one who attempts to convey classified or secret military intelligence and that which is related to it. The type of information the host nation strives to prevent the exposure of to others. It is the same whether the spy's attempts to collect this information succeed or not, and likewise whether or not he is successful in relaying this classified information to the enemy after gathering it. He or she may be a Muslim, a disbeliever (*Ḥarbī*), or one having a covenant with the Muslims.

The scholars are united upon the need to execute the *Ḥarbī* spy upon capture, and the majority hold that the *Dhimmī* spy should also be executed, and this appears to be the correct opinion. However, they differ as to the ruling and punishment for the Muslim spy. There are five opinions regarding the issue:

- 1) He is not to be killed, but instead should be punished with a discretionary punishment.
- 2) It is, without exception, *Wājib* to kill the Muslim spy.
- 3) The spy takes the ruling of the *Zindīq*, and thus if apprehended before his repentance is apparent, it is *Wājib* to kill him.
- 4) The spy is only to be executed if spying has become a routine practice.

- 5) Execution is permissible, although not *Wājib*. As such, the decision rests with the discretion of the *Imām*.

In conclusion, the Muslim spy is spared if he repents before his capture. If this is not the case, he is to be executed except if a greater benefit is to be obtained by sparing and freeing him under supervision. While the one who resists using force, and whose evil cannot be repelled except by killing him, should undoubtedly be killed.

CHAPTER 23

الغنائم وأحكامها

GHANĪMAH AND ITS RULINGS

With respect to the wealth the Muslims appropriate from the disbelievers during the course of *Jihād*, scholars have divided it into three categories:

- 1) **Ghanīmah**. One-fifth (*al-Khumus*) of which is *Wājib* to set aside, while the remainder belongs to the *Ghānimīn* (i.e. the *Mujāhidīn* that participated in the battle), as mentioned by Allāh in *Sūrah al-Anfāl* (8:41):

﴿وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَإِنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ
وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ إِن كُنْتُمْ ءَامَنْتُمْ بِاللَّهِ وَمَا
أَنْزَلْنَا عَلَىٰ عَبْدِنَا يَوْمَ الْفُرْقَانِ يَوْمَ التَّقَىٰ أَجْمَعِينَ وَاللَّهُ عَلَىٰ كُلِّ شَيْءٍ
قَدِيرٌ﴾

And know that anything you obtain of war booty - then indeed, for Allāh is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveler, if you have believed in Allāh and in that which We sent down to Our Servant on the day of

criterion [i.e., decisive encounter] - the day when the two armies met [at Badr].

- 2) **Salb**. This belongs exclusively to the one who acquired it by killing its disbelieving owner.
- 3) **Fay'**. None of the Muslims has the right to this type of wealth individually to the exclusion of others. Rather, it is deposited into the Muslim treasury, and is spent by the *Imām* according to the general benefit of the Muslims. Allāh mentions this type of wealth in *Sūrah al-Hashr* (59:7):

﴿مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ
وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ وَمَا
آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا﴾

And what Allāh restored to His Messenger from the people of the towns - it is for Allāh and for the Messenger and for [his] near relatives and orphans and the [stranded] traveler - so that it will not be a perpetual distribution among the rich from among you. And whatever the Messenger has given you - take; and what he has forbidden you - refrain from.

الفنیه

AL-GHANĪMAH

According to the Ḥanafī School, the legal definition of the word *Ghanīmah* is, “A noun for that which is taken from *Ahl al-Ḥarb*

using force and (means of) subdual, whether this takes place according to these words' literal or figurative meanings.”⁵¹⁹

The Mālikī School holds that, “All wealth obtained intentionally by the Muslims from the polytheists, whether through fighting or deceiving them, thus robbery and theft fall within its definition. However, not included within this category is the wealth abandoned by the disbelievers, or that which is obtained through other than the (above) means.”⁵²⁰

As such, the threat of violence, besiegement, economic sanctions, and their likes would all fall within the above definition.

The Shāfi'ī School maintains that it is, “A noun for whatever is taken from the *Ahl al-Ḥarb* due to a (military) expedition [...] and is for whoever was present (during the battle), whether they be rich or poor.”⁵²¹

While the Ḥanbalī School states, “Whatever is taken from the disbelievers through force or fighting.”⁵²²

حكم الغنيمة

THE RULING REGARDING GHANĪMAH

Ghanīmah has been permitted for this *Ummah* according to the Qur'ān, *Sunnah*, and *Ijmā'*. Moreover, Allāh ﷻ renders it from the purest wealth a believer can acquire. He ﷻ says in *Sūrah al-Anfāl* (8:69):

⁵¹⁹ *Bidā'i' aṣ-Ṣanā'i'* (7/117&118)

⁵²⁰ *Injād fī Masā'il al-Jihād* (p.338)

⁵²¹ *Bidā'i' aṣ-Ṣanā'i'* (4/139)

⁵²² *Al-Mughnī* (6/453), (5072)

﴿فَكُلُوا مِمَّا غَنِمْتُمْ حَلَالًا طَيِّبًا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾ (٦٩)

So consume what you have taken of war booty [as being] **lawful and good**, and fear Allāh. Indeed, Allāh is Forgiving and Merciful.

While it was impermissible for the former nations, as a mercy, favour, and bounty, Allāh permitted it for this *Ummah*. This is evident in the following *Ḥadīth* recorded by both al-Bukhārī رَحِمَهُ اللَّهُ in his *Ṣaḥīḥ: The Book of Prayers* (438), and Muslim رَحِمَهُ اللَّهُ in his *Ṣaḥīḥ: The Book of Mosques and Places of Prayer* (521): Jābir ibn ‘Abdullāh رَضِيَ اللَّهُ عَنْهُ narrated the Prophet ﷺ said:

أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ مِنَ الْأَنْبِيَاءِ قَبْلِي: نُصِرْتُ بِالرُّعْبِ مَسِيرَةَ شَهْرٍ، وَجُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا، وَإِيَّاهُ رَجُلٌ مِنْ أُمَّتِي أَدْرَكَتْهُ الصَّلَاةُ فَلْيُصَلِّ، وَأُحِلَّتْ لِي الْغَنَائِمُ

“I have been given five things that were not given to anyone before me: I was given victory by terror the distance of a month’s journey. The earth has been made a place of prayer and pure, so anywhere a man from my Ummah finds himself at the time of prayer, he should pray. Ghanimah has been made lawful for me, while it was not for anyone before me...”

Ibn Hibbān رَحِمَهُ اللَّهُ reports in his *Ṣaḥīḥ: The Book of Expeditions* (4806) that Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ narrated the Prophet ﷺ said:

أَخْبَرَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْأَزْدِيُّ، قَالَ: حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، قَالَ أَخْبَرَنَا جَرِيرٌ، عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ، عَنْ رَسُولِ اللَّهِ ﷺ، قَالَ: «لَمْ تَحِلَّ الْغَنَائِمُ لِأَحَدٍ سِوَاكَ الرَّؤُوسِ قَبْلَكُمْ، كَانَتْ تَنْزِلُ مِنَ السَّمَاءِ نَارًا فَتَأْكُلُهَا

“The Ghanīmah was not allowed for any of the nations before you - a fire would descend from the sky and consume it.”⁵²³

Al-Bukhārī رَحِمَهُ اللَّهُ likewise narrates in his *Ṣaḥīḥ: The Book of the Obligation of the Khumus* (3124) from Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ who said:

قَالَ رَسُولُ اللَّهِ ﷺ: غَزَا نَبِيٌّ مِنَ الْأَنْبِيَاءِ، فَقَالَ لِقَوْمِهِ: لَا يَتَّبِعُنِي رَجُلٌ مَلَكَ بُضْعَ امْرَأَةٍ، وَهُوَ يُرِيدُ أَنْ يَتَّبِعَنِي بِهَا؟ وَلَمَّا بَيْنَ بِهَا، وَلَا أَحَدٌ بَنَى بُيُوتًا وَلَمْ يَرْفَعْ سُقُوفَهَا، وَلَا أَحَدٌ اشْتَرَى غَنَمًا أَوْ خِلْفَاتٍ وَهُوَ يَنْتَظِرُ وَلَادَهَا، فَغَزَا فِدْنَا مِنَ الْقَرْيَةِ صَلَاةَ الْعَصْرِ أَوْ قَرِيبًا مِنْ ذَلِكَ، فَقَالَ لِلشَّمْسِ: إِنَّكَ مَأْمُورَةٌ وَأَنَا مَأْمُورٌ اللَّهُمَّ احْسِنْهَا عَلَيْنَا، فَحَبِسَتْ حَتَّى فَتَحَ اللَّهُ عَلَيْهِ، فَجَمَعَ الْغَنَائِمَ، فَجَاءَتْ يَعْنِي النَّارُ لِتَأْكُلَهَا، فَلَمْ تَطْعَمْهَا فَقَالَ: إِنَّ فِيكُمْ غُلُولًا، فَلْيَبَايِعُنِي مِنْ كُلِّ قَبِيلَةٍ رَجُلٌ، فَلَزِقَتْ يَدُ رَجُلٍ بِيَدِهِ، فَقَالَ: فِيكُمْ الْغُلُولُ، فَلْيَبَايِعُنِي قَبِيلَتَكَ، فَلَزِقَتْ يَدُ رَجُلَيْنِ أَوْ ثَلَاثَةٍ بِيَدِهِ، فَقَالَ: فِيكُمْ الْغُلُولُ، فَجَاءُوا بِرَأْسٍ مِثْلِ رَأْسِ بَقَرَةٍ مِنْ الذَّهَبِ، فَوَضَعُوهَا، فَجَاءَتْ النَّارُ، فَأَكَلَتْهَا ثُمَّ أَحَلَّ اللَّهُ لَنَا الْغَنَائِمَ رَأَى ضَعْفَنَا، وَعَجَزَنَا فَأَحَلَّهَا لَنَا

The Prophet ﷺ said, “A prophet amongst the prophets carried out a military expedition. He said to his followers, ‘Anyone who has married a woman and wants to consummate the marriage but has not done so yet, should not accompany me; nor should a man who has built a house but has not completed its roof; nor a man who has sheep or she-camels and is waiting for the birth of their young ones.’ So, the prophet carried out the expedition and when he reached the town at the time, or nearly at the time of the ‘Aṣr prayer, he said to the sun, ‘O sun! You are under Allāh’s

⁵²³ Also recorded in *Jāmi’ at-Tirmidhī: The Book of Tafṣīr* (3085). He said that the Ḥadīth is Ḥasan Ṣaḥīḥ Gharīb

Order and I am under Allāh's Order. O Allāh! stop it (i.e. the sun) from setting.' It was stopped until Allāh made him victorious.

Then he collected the Ghanīmah and the fire came to burn it, but it did not burn it. He said (to his men), 'Some of you have stolen something from the Ghanīmah. So one man from every tribe should give me a pledge of allegiance by shaking hands with me.' (They did so and) the hand of a man got stuck over the hand of their prophet. Then that prophet said (to the man), 'The theft has been committed by your people. So all the people of your tribe should give me the pledge of allegiance by shaking hands with me.' The hands of two or three men got stuck over the hand of their prophet and he said, 'You have committed the theft.' Then they brought a head of gold like the head of a cow and put it there, and the fire came and consumed the Ghanīmah. The Prophet ﷺ added, "Allāh saw our weakness and incapacity, so he made Ghanīmah permissable for us."

There is no difference of opinion amongst the scholars regarding the permissibility of the wealth of the disbelievers taken through (military) expedition and *Jihād*, and likewise, that it is justly taken by those of the Muslims that appropriated it.⁵²⁴ *Shaykh al-Islām* ibn Taymiyyah رحمه الله says in *as-Siyāsah ash-Shar'īyyah* (pgs.120&121) regarding the wealth that *Ar-Razzāq* (i.e. Allāh) created, "The basic rule (*Aṣl*) is that Allāh, the Most High, created money only to assist (its owners in) His worship. Therefore, those who disbelieve in Him permit their selves, with which they do not worship Him, and their wealth, with which they do not use to assist them in worshiping Him, for His believing slaves who worship Him. Thus, He returned to them that which they deserve, just as He returns to the person whose inheritance was wrongfully taken, even if he had not previously possessed it (i.e. the inheritance wealth) ..."

⁵²⁴ Refer to *al-Injād fī Abwāb al-Jihād* (p.241)

As is evident in the first verse of *Sūrah al-Anfāl* (8:1), the *Ghanimah* was initially the exclusive right of the Prophet ﷺ to do with as he pleased. Allāh ﷻ said:

﴿يَسْأَلُونَكَ عَنِ الْأَنْفَالِ قُلِ الْأَنْفَالُ لِلَّهِ﴾

They ask you, [O Muhammad], about the bounties [of war]. Say, "The [decision concerning] bounties is for Allāh and the Messenger."

However, this ruling was later abrogated by the verse (8:41):

﴿وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَإِنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَلِيتَمَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ﴾

And know that anything you obtain of war booty - then indeed, for Allāh is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveller

As such a fifth, called the *Khumus*, was set-aside and then divided amongst the aforementioned five groups:

- 1) Allāh and His Messenger ﷺ
- 2) The Prophet's ﷺ close relatives, who are the tribes of Banī Hāshim and Banī Muṭṭalib
- 3) The orphans ⁵²⁵
- 4) The needy, and ⁵²⁶
- 5) The wayfarers ⁵²⁷

⁵²⁵ The orphans are, "Those who lost their fathers when they were minors," (*Tafsīr as-Sa'dī*, p.299). They retain this ruling until they attain the age of puberty (adulthood)

⁵²⁶ 'Abd ar-Raḥmān as-Sa'dī says in his *Tafsīr* (p.299), "They are the needy due to poverty, whether they be young, old, male, or female."

The remaining four fifths are for the *Ghānimīn* (the fighters), as per the words of The Most High:

﴿وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ﴾

And know that anything you obtain of war booty

Indeed, the people of knowledge have a consensus that the *Ghanīmah* is split into five portions, with four being for the *Mujāhidīn*. While the *Khumus* is to be divided into five portions, as stated by ibn Qudāmah رحمته الله in *al-Mughnī* (6/455).

Division of the *Ghanīmah*



⁵²⁷ Ibn Kathīr mentions the wayfarers in his *Tafsīr* of *Sūrah at-Tawbah* (9:60), which although referring to them in relation to *Zakāh*, suffices for the definition of this category. He says, “*Ibn as-Sabīl* is a term used for the needy traveller in a land, where he does not have what helps him continue his trip. This type has a share in the *Zakāh* for what suffices him to reach his destination, even if he has money there. The same is true for whoever intends to travel from his area but does not have enough money.”

ما يعتبر من الغنيمة وما لا يعتبر

WEALTH CONSIDERED TO BE INCLUDED IN THE GHANĪMAH

Wealth appropriated from the disbelievers by way of force falls within two categories:

- 1) Slaves (i.e. those prisoners the *Imām* has chosen to enslave, or those already enslaved from amongst the disbelievers) ⁵²⁸
- 2) All other types of wealth

رقاب الكفار

DISBELIEVING SLAVES

This category can be further divided into a further two sub-categories:

- 1) Men, whose case has already been discussed in Chapter 17
- 2) Women and children, otherwise referred to as *as-Sabī* (السبي)

The ruling concerning the disbelieving women and children (that do not fight) captured during the course of *Jihād* is essentially the same ruling as that of the rest of the wealth appropriated from the disbelievers. Consequently, it is *Wājib* to divide them (or their value) into five equal portions as is indicated in the *Sunnah*.

⁵²⁸ Slaves were, and still are in regions wherein slavery continues to exist, considered a source of wealth for their owners. This was due to their income; in the case of working slaves, and their market value should they be sold or traded

Unlike their adult male counterparts (POWs), the *Imām* does not have the choice whether to ransom, free, or execute.⁵²⁹

As for freeing the women and children, the preceding *Ḥadīth* from *Ṣaḥīḥ al-Bukhārī* (4318&4319) regarding the *Ghanimah* of Ḥawāzin indicates that the Prophet ﷺ encouraged, without forcing, his Companions رَضِيَ اللَّهُ عَنْهُمْ to give up their shares of the captives. For those not content to do so without recompense, the Prophet ﷺ offered to compensate them for their loss from the next wealth that Allāh ﷻ would bestow upon him. Accordingly, Mālik, ash-Shāfiʿī, Aḥmad, and others رَضِيَ اللَّهُ عَنْهُمْ held that the *Imām* has the choice whether to retain the adult male POWs as part of the *Ghanimah* (and thus enslave them), or to exclude them from it and choose between ransoming, freeing, or executing them. It is also within his authority to make exemptions to the general ruling regarding the division of the *Ghanimah* in *Sūrah al-Anfāl* (8:41) due to exceptional circumstances, such as was the case with the *Ghanimah* of Ḥawāzin.⁵³⁰

In *Ṣaḥīḥ Muslim: The Book of Zakāh* (1061), one such incident was documented by ‘Abdullāh ibn Zayd رَضِيَ اللَّهُ عَنْهُ. He narrated:

عَنْ عَبْدِ اللَّهِ بْنِ زَيْدٍ، أَنَّ رَسُولَ اللَّهِ ﷺ لَمَّا فَتَحَ حُنَيْنًا قَسَمَ الْغَنَائِمَ، فَأَعْطَى الْمُؤَلَّفَةَ قُلُوبُهُمْ، فَبَلَغَهُ أَنَّ الْأَنْصَارَ يُحِبُّونَ أَنْ يُصَيَّبُوا مَا أَصَابَ النَّاسَ، فَقَامَ رَسُولُ اللَّهِ ﷺ فَخَطَبَهُمْ فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ: «يَا مَعْشَرَ الْأَنْصَارِ، أَلَمْ أَجِدْكُمْ ضَلَالًا، فَهَدَاكُمُ اللَّهُ بِي؟ وَعَالَةً، فَأَغْنَاكُمُ اللَّهُ بِي؟ وَمُتَفَرِّقِينَ، فَجَمَعَكُمُ اللَّهُ بِي؟» وَيَقُولُونَ: اللَّهُ وَرَسُولُهُ أَمِنْ، فَقَالَ: «أَلَا تُحِبُّونِي؟» فَقَالُوا: اللَّهُ وَرَسُولُهُ أَمِنْ، فَقَالَ: «أَمَا إِنَّكُمْ

⁵²⁹ Rather, if the *Imām* wishes to ransom or free them, he is required to obtain the consent of the fighters in whose shares they have fallen to, as will be discussed shortly - if Allāh wills

⁵³⁰ Refer to *al-Injād fī Abwāb al-Jihād* (p.244)

لَوْ شِئْتُمْ أَنْ تَقُولُوا كَذًا وَكَذَا، وَكَانَ مِنَ الْأَمْرِ كَذًا وَكَذَا» لِأَشْيَاءٍ عَدَدَهَا، زَعَمَ عَمْرُو أَنْ لَا يَحْفَظُهَا، فَقَالَ: «أَلَا تَرْضَوْنَ أَنْ يَذْهَبَ النَّاسُ بِالشَّاءِ وَالْإِبِلِ، وَتَذْهَبُونَ بِرَسُولِ اللَّهِ إِلَى رِحَالِكُمْ؟ الْأَنْصَارُ شِعَارُ وَالنَّاسِ دِتَارُ، وَلَوْلَا الْهَجْرَةُ لَكُنْتُ امْرَأً مِنَ الْأَنْصَارِ، وَلَوْ سَلَكَ النَّاسُ وَاْدِيًا وَشِعْبًا، لَسَلَكَتُ وَاْدِي الْأَنْصَارِ وَشِعْبَهُمْ، إِنَّكُمْ سَتَلْقَوْنَ بَعْدِي أَثَرَةً، فَاصْبِرُوا حَتَّى تَلْقَوْنِي عَلَى الْحَوْضِ»

“When the Messenger of Allāh ﷺ conquered Ḥunayn he distributed the *Ghanīmah*, bestowing upon those whose hearts it was intended to win. It was conveyed to him that the *Anṣār* cherished a desire that they should be given (that very portion) which the people (of Quraysh) had got. Upon this the Messenger of Allāh ﷺ stood up and, after praising Allāh and glorifying Him, addressed them: ‘O *Anṣār*, did I not find you misguided and Allāh guided you through me, and (in the state of) being destitute and Allāh enriched you through me, and in a state of disunity and Allāh united you through me?’ They replied, ‘Allāh and His Messenger are most benevolent’. He said, ‘Why do you not answer me?’ They said, ‘Allāh and His Messenger are the most benevolent.’ He said, ‘If you wish you should say so and so, and the situation was such and such’ (and in this connection he made mention) of a number of things. ‘Amr (one of the narrators) is under the impression that he has not been able to (correctly) memorise them. He (ﷺ) further said, ‘Don’t you feel happy (over this state of affairs) that the people should go away with goats and camels, and you go to your places along with the Messenger of Allāh? The *Anṣār* are inner garments (more close to me) and (other) people are outer garments. Had it not been for *Hijrah*, I would have been a man from among the *Anṣār*. If the people were to tread a valley or a narrow path, I would tread the valley (chosen) by the *Anṣār* or narrow path (trodden) by them. And you would soon find after me preferences (over you in

getting material benefits). So you should exercise patience until you meet me at the Hawd (i.e. the lake of al-Kawthar).”

Nevertheless, it should be noted that this exception should not be made the general rule, as there is no evidence to suggest the Prophet ﷺ or his Companions رضي الله عنهم performed, or sanctioned such an action. Therefore, depriving a believer of his divinely given rights is not something to be taken lightly, and may well be one of the reasons Allāh ﷻ withholds victory and imposes defeat upon the believers - and He ﷻ surely knows best.⁵³¹

تنبيه: أخذ نساء الصريين سبابة

NOTE: REGARDING TAKING DISBELIEVING WOMEN AS CONCUBINES

Concerning the issue of *Mujāhidīn* taking the disbelieving women as concubines, it is an undeniable fact that the *Shari'ah* permits this practice. This is evident in a number of places throughout the Qur'ān, such as in *Sūrah al-Ma'ārij* (70:29-31) wherein Allāh ﷻ says:

﴿وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ ﴿٢٩﴾ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ
أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ ﴿٣٠﴾ فَمَنِ ابْتَغَىٰ وَرَاءَ ذَلِكَ فَأُولَٰئِكَ هُمُ الْعَادُونَ ﴿٣١﴾﴾

⁵³¹ That being said, some hold that, if a Muslim knows that the group he belongs to, or fights underneath collects, but does not distribute the *Ghanimah* amongst the *Ghānimīn*, he should not take from it (without their permission). As this may constitute a sin, due to his implicit agreement to their policy of not distributing *Ghanimah*, by participating militarily with them without coming to an agreement regarding the issue - and Allāh ﷻ knows best.

And those who guard their private parts Except from their wives or **those their right hands possess (i.e. their female slaves)**, for indeed, they are not to be blamed - But whoever seeks beyond that, then they are the transgressors.

Likewise, the actions of the Prophet ﷺ and his Companions رَضِيَ اللَّهُ عَنْهُمْ attest to the legitimacy of this practice, such as their treatment of the captives from the tribes of Banī Muṣṭaliq and Banī Quraydhah.

In both *Ṣaḥīḥ al-Bukhārī: The Book of Freeing Slaves* (2541) and *Ṣaḥīḥ Muslim: the Book of Jihād and Expeditions* (1730), ibn ‘Awn said that he wrote to Nāfi’, who responded saying he had been informed by ibn ‘Umar who had been present in that army:

ابْنُ عَوْنٍ، قَالَ: كَتَبْتُ إِلَى نَافِعٍ، فَكَتَبَ إِلَيَّ «إِنَّ النَّبِيَّ ﷺ أَغَارَ عَلَى بَنِي الْمُصْطَلِقِ وَهُمْ غَارُونَ، وَأَنْعَامُهُمْ تُسْقَى عَلَى الْمَاءِ، فَقَتَلَ مُقَاتِلَتَهُمْ، وَسَبَى ذَرَارِيَهُمْ، وَأَصَابَ يَوْمَئِذٍ جُؤَيْرِيَّةَ»، حَدَّثَنِي بِهِ عَبْدُ اللَّهِ بْنُ عُمرَ، وَكَانَ فِي ذَلِكَ الْجَيْشِ

“The Messenger of Allāh ﷺ raided Banī Muṣṭaliq whilst they were watering their livestock and unaware. He killed their fighters and captured their women and children, and that was the day Juwayriyah رَضِيَ اللَّهُ عَنْهَا was captured.”⁵³²

Regarding Banī Qurayhah Imām al-Bukhārī رَحِمَهُ اللَّهُ narrates in his *Ṣaḥīḥ: The Book of Expeditions Led by the Prophet* (4121) that Abū Sa‘īd al-Khudrī رَضِيَ اللَّهُ عَنْهُ said:

⁵³² Whom he ﷺ later married after freeing her (refer to *Ṣaḥīḥ al-Bukhārī* [2544]). Scholars also use this narration and others like it as evidence of the permissibility of enslaving Arab women, and of attacking without warning those disbelievers whom the message of Islām has already been conveyed to

أَبَا سَعِيدٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ، يَقُولُ: نَزَلَ أَهْلُ قُرَيْظَةَ عَلَى حُكْمِ
سَعْدِ بْنِ مُعَاذٍ، فَأَرْسَلَ النَّبِيُّ ﷺ إِلَى سَعْدٍ فَأَتَى عَلَى حِمَارٍ، فَلَمَّا دَنَا
مِنَ الْمَسْجِدِ قَالَ لِلْأَنْصَارِ: «قُومُوا إِلَيَّ سَيِّدُكُمْ، أَوْ خَيْرِكُمْ». فَقَالَ:
«هَؤُلَاءِ نَزَلُوا عَلَى حُكْمِكَ». فَقَالَ: **تَقْتُلُ مُقَاتِلَتَهُمْ، وَتَسْبِي ذُرَارِيَهُمْ،**
قَالَ: «قَضَيْتَ بِحُكْمِ اللَّهِ» وَرَبَّمَا قَالَ: «بِحُكْمِ الْمَلِكِ»

The people of (Banū) Quraydhah agreed to accept the verdict of Sa'd ibn Mu'adh. So the Prophet ﷺ sent for Sa'd, and the latter came (riding) a donkey. When he approached the Mosque, the Prophet said to the Anṣār, “Get up for your chief,” or “for the best among you.” Then the Prophet ﷺ said (to Sa'd). “These (i.e. Banū Quraydhah) have agreed to accept your verdict.” Sa'd ruled, “Kill their (men) warriors and take their women and offspring as captives.” On that the Prophet said, “You have judged according to Allāh's Judgment,” or perhaps he said, “According to the judgment of the King (i.e. Allāh).”

A number of contemporary academics have however raised the question as to whether this practice was permitted in-and-of itself, or only as a response to the prevailing conditions and norms of the day. Meaning, that since it was customary at the time for the victors to appropriate the women, children, and property of the defeated as spoils of war, and take the females as concubines if they so wished. The Muslims were permitted to behave in the same fashion so as to not be at a loss. Nevertheless, this argument must be discounted as it lacks evidence substantiating it.

This argument is, without much doubt, an attempt by its adherents to render the practice impermissible. Contending that since the disbelievers (unbeknown to them) do not adhere to such behaviour in the 21st century, the Muslims are no longer permitted, as the 'Illah (reason) for the ruling is no longer present.

Strangely enough, many of the supporters of such arguments do not even the practice of *Jihād* as being legitimate in the contemporary setting anyway. Thus, the argument serves as yet another example of Satan incites the Muslims to waste valuable time and effort researching and debating largely theoretical issues. Whilst the real and pressing issues the *Ummah* is currently confronted with are trivialised and ignored, akin to the popular discourse in the *Masājid* of Andalus whilst the Muslim towns, vilages, and cities of the Iberian Peninsula fell one after the other to the ruthless crusaders - and we beg Allāh's pardon.

That being said, Shaykh ‘Abdullāh ‘Azzām رَحِمَهُ اللهُ ruled during the Soviet-Afghan *Jihād*: “And then if you would ask for a ruling from the zealous Arab youth that arrived to Peshawar and studied some *Fiqh*, or so-and-so studied *Ḥadīth*; ‘Is it allowed to take captured Russian women, those that are in the battlefield and fight against the Muslims, as concubines?’ Of course the answer would be; ‘Yes, according to Shaykh so-and-so.’ And I say to him: It is not allowed for you, and also it is *Ḥarām* for you [...]. Why? Because if we were to take the Russian women, then they would take a hundred Muslim women and violate their chastity [...] so should we then give a ruling that permitting this or forbidding it? Thus, it is imperative for the one who issues a ruling on an issue to know (and understand) the details of the matter, and the (time,) place and situation that you are in [...]. It is essential that you understand the subject thoroughly according to the reality on the ground, not by (simply) looking into the matter from a (purely) theoretical aspect...”

As can be seen, the Shaykh رَحِمَهُ اللهُ ruled the act impermissible, not do it being prohibited in-and-of itself, but rather due to the likely consequences of its enactment - a concept known in *Uṣūl al-Fiqh* as *Preventing the Harms* (سد الذرائع). In placing this in context, the act of enjoining good and forbidding evil can be utilised as an example. As such, if in performing this obligation, an even greater evil (as defined by the *Sharī'ah*) would likely transpire,

then at that particular instant that which was originally *Wājib* becomes impermissible. *Shaykh al-Islām* ibn Taymiyyah رحمته الله says regarding this in his treatise *al-Amr bi'l-Ma'rūf wa'n-Nahī 'an al-Munkar* (p.10): “Whenever the adverse effects of any act of enjoining or forbidding are greater than its benefit, it is no longer part of what Allāh has enjoined upon us, even if it be a case of neglecting obligations or committing the forbidden.” Consequently, if this is the case for temporarily abandoning the obligations due to a (justified) fear of a greater harm befalling the *Ummah*, then how about abandoning deeds that do not even reach the level of *Wājib*, such as taking the disbelieving women as concubines?

It is also possible to infer this understanding from the words of the *Imām* ibn Qudāmah رحمته الله, who ruled in *al-Mughnī* (9/202), “... If there is no *Imām* the *Jihād* should not be delayed, as its benefit(s) will then be lost. If any *Ghanīmah* is obtained it should be split among themselves according to the regulations of the *Sharī'ah*. Al-Qāḍī said, ‘The division of women should be delayed until an *Imām* becomes apparent in order to safeguard chastity (lit. the private parts).’”⁵³³

Another factor warranting consideration is that of ability; do the Muslims in general, and *Mujāhidīn* in particular, have the ability to regulate and control according to the dictates of the Book and the *Sunnah*, the institution of slavery in the territories they administer? In addition, would the presence of female slaves from the disbelievers likely turn into a ‘free-for-all’, with everyone following his own opinion, worshiping his desires and completely disregarding the rights and chastity of the slaves and of themselves?

Unfortunately, the latter has indeed been witnessed in recent history, and we ask Allāh ﷻ to guide and amend us. Another,

⁵³³ *Al-Mughnī* (7423), *al-Mashārī' al-Ashwāq* (p.1042), and (p.379) in its English abridgement

although perhaps unintended consequence of such a 'free-for-all' type scenario is that their husbands, and/or the Muslim community at large, neglect many of the pious and chaste believing women. And this is due in large part to the existence of 'exotic' concubines being bought, sold, traded, and even 'rented' freely in the slave-market.

Consequently, the act of taking the disbelieving women as concubines cannot be denounced outright as Allāh, the All-Knowing the All-Wise, has permitted it. In addition, the Mother of the believers, Juwayriyyah bint al-Hārith رَضِيَ اللَّهُ عَنْهَا was initially taken as part of the *Ghanīmah* of Banū Muṣṭaliq before being freed and then married by the Messenger of Allāh ﷺ, providing an excellent example of the practical implementation of the Qur'ān in this regard. However, a lack of ability to prevent the harmful consequences from overshadowing the benefits that might be obtained from the practice points to the conclusion that in the majority of contemporary settings, the practice should be prohibited - and Allāh ﷻ indeed knows best.⁵³⁴

⁵³⁴ The *Shari'ah*, in its essence, was brought to bring about benefit to mankind, both in their worldly and religious affairs. As such, with regards to actions' benefits (*Maṣāliḥ*) and harms (*Maḥāsīd*), they can be divided into three categories:

- 1) Those actions which solely bring about benefit, and as such, are unquestionably permitted (*Halāl*)
- 2) Those actions which solely bring about harm, and as such, are unquestionably prohibited (*Harām*)
- 3) Those actions which bring about both benefit and harm

Concerning the third category, they are judged according to that which takes precedence - if the harms outweigh the benefits, they will be prohibited, while they are permitted if the opposite is true. For example, Allāh says regarding His prohibition of intoxicants and gambling (2:219):

﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعَةٌ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا﴾

They ask you about wine and gambling. Say, "In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit."

الأموال الكفار

THE WEALTH OF THE DISBELIEVERS

This is divided into two categories:

- 1) Land and Real Estate
- 2) All other types of wealth (excluding captives)

The scholars have long differed over the question as whether land and real-estate is to be treated as all other types of *Ghanimah* (in this category); thus being subject to the customary division. Alternatively, is it treated as *Fay*, and is considered as an endowment (*Waqf*), to be utilised according to that which yields the most benefit for the Muslims?

There are three opinions on the issue:

The **first** is that it is to be treated in the same way as the rest of the *Ghanimah*. Ash-Shāfi'ī, Abū Thawr, and Aḥmad رَحِمَهُمُ اللَّهُ according to one report from him, held this opinion. They used as evidence the generality of Allāh's words:

﴿وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَإِنَّ لِلَّهِ خُمْسَهُ﴾

***And know that anything you obtain of war booty -
then indeed, for Allāh is one fifth of it***

However, in the instance in which the harms and benefits are both equal, the act is prohibited according to the principle in the *Sharī'ah* of the preference being given to the repelling of harm over the obtainment of benefit. Although for some acts originally permitted (or even obliged) this may, due to external factors, change from time to time, leading a permissible act to become (temporarily) prohibited due to the harms that come as a consequence of the act outweighing its benefits in that particular situation. Refer to ibn al-'Uthaymīn's *Mandhūmah Uṣūl al-Fiqh* (pgs.61&62) and ibn Taymiyyah's *al-Amr bi'l-Ma'rūf wa'n-Nahī 'an al-Munkar* (p.10) for more details concerning these principles

Also the fact that the Prophet ﷺ divided (half of) the land of Khaybar amongst the *Mujāhidīn*.⁵³⁵

The **second** is that the land is not divided, but takes the ruling of *Fay'* and remains an endowment utilised for the overall benefit of the Muslims. Consequently, it does not belong to any individual Muslim, but rather is owned collectively by the *Ummah* until the Day of Judgement, both those who participated in its conquest and those who did not.

Mālik and Aḥmad رَحِمَهُمَا اللَّهُ, according to another report, adhered to this opinion. They relied upon the actions of 'Umar ibn al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ with regards to the region of Sawād,⁵³⁶ as evidence. He turned the region into an endowment in accordance with his understanding of the verses in *Sūrah al-Ḥashr* (59:7-10):

﴿مَّا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ
وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ
مِنْكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا
اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ۝٧﴾ لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ
دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلًا مِنَ اللَّهِ وَرِضْوَانًا وَيَنْصُرُونَ اللَّهَ
وَرَسُولَهُ أُولَٰئِكَ هُمُ الصَّادِقُونَ ۝٨﴾ وَالَّذِينَ تَبَوَّءُوا الدَّارَ وَالْإِيمَانَ مِنْ
قَبْلِهِمْ يُحِبُّونَ مَنْ هَاجَرَ إِلَيْهِمْ وَلَا يَجِدُونَ فِي صُدُورِهِمْ حَاجَةً مِّمَّا

⁵³⁵ This was due to half the area being captured by force and the remainder, along with its inhabitants were subject to a treaty. Refer to the works on *Sīrah* for more details of the conquest

⁵³⁶ Sawād is a region once part of the Persian Empire encompassing most of sothern Iraq. Under the Umayyad and 'Abbasid dynasties, it was an official political term for the province encompassing most of modern Iraq, except for the Syrian Desert and Upper Mesopotamia in the north

أُوتُوا وَيُؤْتَرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ وَمَنْ يُوقِ شُحَّ
نَفْسِهِ فَأُولَئِكَ هُمُ الْمُفْلِحُونَ ﴿٩﴾ وَالَّذِينَ جَاءُوا مِنْ بَعْدِهِمْ
يَقُولُونَ رَبَّنَا اغْفِرْ لَنَا وَلِإِخْوَانِنَا الَّذِينَ سَبَقُونَا بِالْإِيمَانِ وَلَا تَجْعَلْ
فِي قُلُوبِنَا غِلًا لِلَّذِينَ آمَنُوا رَبَّنَا إِنَّكَ رَءُوفٌ رَحِيمٌ ﴿١٠﴾

And what Allāh restored to His Messenger from the people of the towns - it is for Allāh and for the Messenger and for [his] near relatives and orphans and the [stranded] traveller - so that it will not be a perpetual distribution among the rich from among you. And whatever the Messenger has given you - take; and what he has forbidden you - refrain from. And fear Allāh; indeed, Allāh is severe in penalty.

For the poor emigrants who were expelled from their homes and their properties, seeking bounty from Allāh and [His] approval and supporting Allāh and His Messenger, [there is also a share]. Those are the truthful.

And [also for] those who were settled in the home [i.e., al-Madinah] and [adopted] the faith before them. They love those who emigrated to them and find not any want in their breasts of what they [i.e., the emigrants] were given but give [them] preference over themselves, even though they are from the stinginess of his soul - it is those who will be the successful.

And [there is a share for] those who came after them, saying, “Our Lord, forgive us and our brothers who preceded us in faith and put not in our hearts [any] resentment toward those who have believed. Our Lord, indeed You are Kind and Merciful.”

‘Umar رَضِيَ اللَّهُ عَنْهُ said regarding this, “There is not anyone (from the Muslims) except that he has a right to this wealth, even the shepherd in ‘Aden.” ⁵³⁷

Likewise, in *Ṣaḥīḥ al-Bukhārī: The Book of the Obligation of the Khumus* (3125) ‘Umar رَضِيَ اللَّهُ عَنْهُ said:

لَوْلَا آخِرُ الْمُسْلِمِينَ، مَا فَتَحْتُ قَرْيَةً إِلَّا قَسَمْتُهَا بَيْنَ أَهْلِهَا، كَمَا قَسَمَ
النَّبِيُّ ﷺ خَيْرٌ

“Were it not for those Muslims who have not been born yet, I would have distributed (the land of) every town I conquer amongst the fighters as the Prophet ﷺ distributed the land of Khaybar.”

While the **third** opinion is that the *Imām* has the authority to decide whether to consider and divide the land as *Ghanimah*, as was done by the Messenger of Allāh ﷺ with Khaybar. Or, to leave the land as an endowment as ‘Umar رَضِيَ اللَّهُ عَنْهُ did with Iraq. *Imām* Abū Ḥanīfah and his companions, Sufyān ath-Thawrī, Abī ‘Ubayd, and Aḥmad رَضِيَ اللَّهُ عَنْهُمْ according to the most apparent of the positions reported from him, were proponents of this view.

Thus, those deeming this opinion correct hold that both, the verses in *Sūrah al-Anfāl* (8:41) and those in *Sūrah al-Hashr* (59:7-10), are an indication of the *Imām*'s entitlement to choose between the two options concerning conquered lands. This appears to be the correct opinion - and Allāh ﷻ knows best.

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللَّهُ sums up the issue saying:

“If the land is conquered by force, the scholars have three opinions: The **first**, which is the opinion of ash-Shāfi’ī, is that it is *Wājib* to divide it between the *Ghānimīn* except if

⁵³⁷ A city in southern Yemen, then the southernmost and furthest of the Islamic territories from the northernmost front lines in Iraq

they willingly renounce their right to it, and in which case it would become an endowment. He says (i.e. *Imām* ash-Shāfi'ī) in (*al-Umm*), 'If the ruler decrees that the land is to be transferred into an endowment without the consent of the *Ghānimīn*, then his decree is invalid; due to the Prophet's dividing of Khaybar amongst the fighters.' However, the majority of scholars differed with ash-Shāfi'ī with regards to this, instead viewing what 'Umar ibn al-Khaṭṭāb did in taking control of, and treating the conquered lands as *Fay*' without the seeking the consent of the *Ghānimīn* was acceptable and permissible. 'Umar did the same with every land that was conquered (during his tenure as Caliph) in *ash-Shām*, Iraq, Egypt, and other than these, only dividing those things that could be physically carried and moved.

However Mālik and a group of scholars, and this is the **second** opinion, held that (the division of the land of) Khaybar was exceptional for the people of Ḥudaybiyyah. Accordingly, the *Imām* of the Mālikī School Ismā'īl ibn Ishāq divided (the *Ghanīmah*) in opposition to ash-Shāfi'ī with regards to land (i.e. they did not divide it, but rather treated it as *Fay*') [...].

While from *Imām* Aḥmad there are two statements, however the most renowned to be his (actual) position is the **third** opinion and that which the majority of scholars, such as Abū Ḥanīfah, ath-Thawrī, and Abī 'Ubayd adhere to. It states that the *Imām* is entitled to do (with the land) whatever is in the best interests of the Muslims. Thus, he may divide it amongst the fighters or keep it (as an endowment). If he deems it best to divide it as the Prophet ﷺ did with Khaybar, he should do so. While if he deems it best to leave it for the Muslims as *Fay*', then he should do so as 'Umar, and what is reported from the Prophet ﷺ regarding half of Khaybar - he ﷺ divided half and left

half for his successors. Additionally, (even though) Makkah was conquered by force, he did not divide it amongst the *Ghānimīn*. Consequently, know that lands conquered by force are permissible to divide, or to leave (as *Fay'*).”⁵³⁸

[End of ibn Taymiyyah quote]

المال غير العقار

ALL OTHER TYPES OF WEALTH

The disbelievers' wealth can be further sub-divided into:

- 1) *Salb*, whose ruling will follow shortly - if Allāh wills
- 2) Other than *Salb*

As for the wealth other than the *Salb*, it can be yet further divided into:

- a) Wealth that previously belonged to the disbelievers, and as such, must be divided according to the prescribed division of *Ghanīmah*. The only exception to this are perishables such food, drink, and their likes, which are permissible for the fighters to consume before the gathering and division of the *Ghanīmah* if the following conditions are met:
 - i. Their consumption is restricted to *Dār al-Ḥarb*
 - ii. They are consumed only according to need

Accordingly, it is permissible for the *Mujāhidīn* to eat and drink from such wealth in the lands of the enemy, but it is not allowed for individuals to store it for the purposes of transportation back to *Dār al-Islām*. For this to become permissible, the food, drink, and their likes must be divided as per the rules governing the

⁵³⁸ *Majmū' al-Fatāwā* (28/581)

division of the *Ghanimah*, thus each fighter gets his share and can do with it whatever he pleases. Neither is it permissible for individuals to take more than they can reasonably consume, such as a man taking a whole cow for himself and thus causing much of it to go to waste.

The scholars derived these conditions from the following narration is *Ṣaḥīḥ al-Bukhārī: The Book of the Khumus* (3154) wherein ibn ‘Umar رَضِيَ اللَّهُ عَنْهُمَا narrated:

كُنَّا نُصِيبُ فِي مَغَازِينَا الْعَسَلَ وَالْعِنَبَ، فَنَأْكُلُهُ وَلَا نَرْفَعُهُ

“On our expeditions we used to be allotted honey and grapes, so we would eat from them without taking them (to the *Amīr*).”

While in *Bulūgh al-Marām: The Book of Jihād* (1307) ibn Ḥajar رَحِمَهُ اللَّهُ says, “Ibn ‘Umar رَضِيَ اللَّهُ عَنْهُمَا narrated:

كُنَّا نُصِيبُ فِي مَغَازِينَا الْعَسَلَ وَالْعِنَبَ، فَنَأْكُلُهُ وَلَا نَرْفَعُهُ. رَوَاهُ الْبُخَارِيُّ.
وَلَا يَبِي دَاوُدَ: فَلَمْ يُؤْخَذْ مِنْهُمْ الْخُمْسُ. وَصَحَّحَهُ ابْنُ حِبَّانَ.

‘On our expeditions we used to get honey and grapes and eat them while on our military expeditions without bringing them to the Prophet ﷺ (or whoever was in charge of the division of the *Ghanimah*).’ Related by al-Bukhārī (3154). Abū Dāwūd (2701) narrated, ‘The fifth (*Khumus*) was not taken from them.’ Ibn Ḥibbān graded it as *Ṣaḥīḥ*.”

Ibn Ḥibbān رَحِمَهُ اللَّهُ also narrated in his *Ṣaḥīḥ* (4805):

فَلَمْ يَخْمُسْهُ النَّبِيُّ ﷺ

“The Prophet ﷺ would not divide it.”

Aṣ-Ṣan'ānī رحمه الله says in *Subul as-Salām: The Book of Jihād* (2/1061), his commentary on *Bulūgh al-Marām*, in the chapter: 'Whatever was Taken from the Food of the Enemy Before its Division': "They would not stockpile the food, neither would they seek the permission of the one in charge of the *Ghanīmah*, due to them knowing beforehand they were permitted. The majority of scholars hold that it is permissible for the *Ghānimīn* to take what would suffice them from every food they are generally accustomed to consuming, and fodder for their (riding) animals before the division (of the *Ghanīmah*). Whether it being with, or without the *Imām*'s permission, and their evidence for this was the (above) narration and (likewise) what the two Shaykh's (i.e. al-Bukhārī and Muslim رحمه الله) extracted from its (rulings)."

Ibn 'Abd al-Barr رحمه الله also commented saying, "The majority of the Muslim scholars agree on the permissibility of the Muslims eating the enemies food as long as they (i.e. the Muslims) are in the enemy's lands, and taking from it according to necessity [...]. According to Mālik, ash-Shāfi'ī, Abū Ḥanīfah, ath-Thawrī, al-Awzā'ī, and Layth ibn Sa'd, it is permissible to eat from the food and (feed their horses, etc.) the fodder in *Dār al-Ḥarb* without the permission of the *Imām*. Likewise, Aḥmad, Ishāq, Abī 'Ubayd, and Abī Thawr hold that it is acceptable to slaughter livestock for the purposes of eating. However, ibn Shihāb (az-Zuhrī) held that this could only be undertaken with the permission of the *Imām* [...]. As for (the fighter) taking from the food with him to *Dār al-Islām* (prior to its division), the majority of scholars disapproved of it..."⁵³⁹

- b) The second type is wealth that did not previously belong to the disbelievers, such as wild animals, forests, natural resources, and the like. This type of wealth, according to *Imām* ash-Shāfi'ī رحمه الله, does not fall under the rules of

⁵³⁹ *Al-Istidhkār* (5/52)

Ghanīmah in terms of the necessity of collecting, dividing, and distributing it.⁵⁴⁰

حكم أموال المسلمين إذا استردوها من الحربيين

THE RULING REGARDING WEALTH OF THE MUSLIMS RECLAIMED FROM THE DISBELIEVERS

If the disbelievers plunder the wealth of the Muslims, however the Muslims are afterwards able to reclaim it through *Jihād*, is it considered as *Ghanīmah* or not? In addition, if a Muslim finds his personal property amongst the *Ghanīmah*, does he have the right to reclaim it, or is he required to ‘buy’ it back from the *Ghanīmah*?

The majority of jurists do not consider this ‘reclaimed’ wealth as *Ghanīmah*. Likewise, they have a consensus that if someone finds his personal property before the division of the *Ghanīmah* he is within his rights to reclaim his property. However, according to the Ḥanafī School and in one report from Aḥmad رحمه الله, if this takes place after the division of the *Ghanīmah*, he retains his right to reclaim his property, however he is required to pay its price to whoever share it fell into.

The Mālikī jurists hold that if wealth is known to have belonged to a Muslim or *Dhimmī*, then it should not be divided amongst the *Ghānimīn*, and thus the owner has the unrestricted right to reclaim his property without having to pay any recompense.

The second report from Aḥmad رحمه الله maintains that once the division and distribution of the *Ghanīmah* has taken place, the

⁵⁴⁰ Refer to *Rawḍah at-Ṭālibīn* (10/261)

former owner of the property has no right whatsoever to his property. As such, whoever's share it fell into may decide to dispose of it in any way he deems fit, and is not required to return, or sell it to its previous owner should he request it.

The Shāfi'ī School, Abū Thawr, and the Dhāhirī's رَحِمَهُمُ اللَّهُ consider it *Wājib* to return any personal property to its owners prior to the division of the *Ghanīmah*. Although, if due to an oversight it is distributed unknowingly, its owner has the right to reclaim it without compensation, and the fighter who's share it fell into should be compensated for his loss from the *Khumus*.⁵⁴¹

شروط استحقاق الغنيمة

ENTITLEMENT TO THE GHANĪMAH AND ITS CONDITIONS

In order to be eligible for a share in the *Ghanīmah* scholars have mentioned the following conditions:

- 1) He was from the *Mujāhidīn* who took part in the battle(s) in which the *Ghanīmah* was won⁵⁴²
- 2) He entered *Dār al-Ḥarb* with the intention of fighting, regardless if he actually fought. However, if he entered without the intention of *Jihād*, then it is a requirement that he actually fights, due to the statement of 'Umar رَضِيَ اللَّهُ عَنْهُ which none of the Companions رَضِيَ اللَّهُ عَنْهُمْ differed with:

إِنَّمَا الْغَنِيْمَةُ لِمَنْ شَهِدَ الْوَقْعَةَ

⁵⁴¹ Refer to *Sharḥ as-Siyar al-Kabīr* (2/197), *Hāshiyah ad-Dasūqī* (2/195&196), and others

⁵⁴² Refer to *Kashshāf al-Qinā'* (3/82) and *Aḥkām al-Qur'ān li'ibn al-'Arabī* (2/412)

“The *Ghanīmah* is only for those who participated in the battle.”⁵⁴³

- 3) The fighter is a male, as women are not automatically entitled a share of the *Ghanīmah* even if they fight
- 4) The fighter is Muslim, as disbelievers are not automatically entitled a share of the *Ghanīmah* even if they fight
- 5) The fighter is free, as slaves are not automatically entitled a share of the *Ghanīmah* even if they fight
- 6) The fighter is a sane adult, as the child and insane are not entitled a share of the *Ghanīmah*

Imām al-Azdī al-Qurtubī رحمه الله says in *al-Injād* (p.260), “There is a consensus amongst the people of knowledge that whoever is free, male, adult, sane, Muslim, and able-bodied is entitled to a share of the *Ghanīmah* if he participates (along with the rest of the army) and is not merely a trader or labourer.” He also says (p.360), “The majority of the scholars say that those who have been mentioned; the *Dhimmī*, the woman, the child, and the insane can, according to the discretion of the *Imām*, be given a share (رضح) of the *Ghanīmah* less than the share of the *Mujāhid* who fulfils the (above) conditions.”

Imām an-Nawawī رحمه الله says in *Rawḍah aṭ-Ṭālibīn* (6/370), “The *Imām* (should) discern between those not entitled to a (regular) share of the *Ghanīmah* according to their benefit. Therefore, it is more likely that the fighter and the one who fights him have more (benefit to their armies) over those other than them; the cavalryman over the infantryman; and the woman who tends to the sick and wounded, and serves water to the thirsty (fighters), over the one who guards the (armies) belongings. This differs with the (regular) share of the *Ghanīmah*, as this is the same for the fighter and other than him due to the texts (from the *Sharī’ah* that have fixed it). While the discretionary share (*Raḍukh*) is

⁵⁴³ Reported by ‘Abd ar-Razzāq (9689), *Sunan Sa’īd ibn Manṣūr* (2791), *al-Muṣannaf ibn Abī Shaybah* (33225&33226). Ibn Hajar said about it in *Fath al-Bārī* (6/224), “Its *Isnād* is *Ṣaḥīḥ*.”

calculated according to the *Ijtihād* (of the *Imām*), in the same way as the amount to blood money for the free Muslim, or the price of the slave is estimated.”

محل الرضخ

THE PLACE FROM WHICH THE DISCRETIONARY SHARE IS TAKEN

The Ḥanafī School, an opinion of the Shāfi'ī, and according to one interpretation of the Ḥanbalī School, the *Rudukh* (discretionary share) should be taken from the main body of the *Ghanīmah* before its division.

It is also reported from the Shāfi'ī School, according to their predominant position, and the Ḥanbalī School corresponding to their second interpretation, it is to be taken from the four-fifths of the *Ghanīmah* after the *Khumus* has been extracted.

Yet another of the Shāfi'ī School's opinions is that it should be taken from a fifth of the *Khumus* (i.e. the fifth assigned to Allāh and His Messenger ﷺ), although the Mālikī position holds, like the *Nafl*, it is taken from the (entire) *Khumus*.⁵⁴⁴

⁵⁴⁴ Refer to *Rawḍah at-Ṭālibīn* (3/372)

هل ترد السراية ما تنضم على الجيش،

ويرد ما تنضم على السراية؟

**DOES THE DETACHMENT SHARE ITS GHANĪMAH
WITH THE MAIN BODY (OF THE ARMY), AND VICE
VERSA?**

In *al-Umm* (4/153) *Imām ash-Shāfi'ī* رَحِمَهُ اللهُ says, “If the leader divides his forces into two elements and one wins *Ghanīmah* while the other does not, or he dispatches a detachment from the main base (of the army) and they win *Ghanīmah* while the main body does not. Alternatively, the main body wins *Ghanīmah* to the exclusion of the detachment; each group shares in the *Ghanīmah* of its sister elements as (ultimately) the army is one.”

Imām ash-Shīrāzī رَحِمَهُ اللهُ says in *al-Madhhab* (2/246), “If the *Amīr* accompanying the army dispatches an advanced guard towards his intended location, or to other than there, then the detachment wins *Ghanīmah*, the main body of the army shares in it, and vice versa. This is because, when Ḥawāzin were defeated at Ḥunayn, one of their detachments was captured before it reached Awṭās (i.e. at-Ṭā'if) and its *Ghanīmah* was divided between everyone (i.e. all of the *Mujāhidīn* present). ‘Amr ibn Shu’ayb reported from his father that he heard from the Prophet ﷺ:

وَالْمُسْلِمُونَ يَدُّ عَلَى مَنْ سِوَاهُمْ، تَكَافُؤُ دِمَائِهِمْ، يُجِيرُ عَلَيْهِمْ أَذْنَاهُمْ،
وَيَرُدُّ عَلَيْهِمْ أَقْصَاهُمْ، تُرَدُّ سَرَائِهِمْ عَلَى قَعْدِهِمْ

‘The Muslims are united against those not from them, they are all equal in terms of their blood, the covenants of the lowest among them are binding upon all of them, the (spoils) are

returned to the furthest of them, and their detachments return (the *Ghanīmah*) to those stationed.’⁵⁴⁵

Thus, the entire army is one, with none being specified for the *Ghanīmah* to the exclusion of others.”

Ibn ‘Abd al-Barr رَحِمَهُ اللهُ says in *al-Istidhkār* (5/42), “The scholars agree that if a detachment ventures out from the main body and captures *Ghanīmah*, the main body shares with them in it.”

In *al-Awsaṭ* (11/151) ibn al-Mundhir said, “According to Mālik, ash-Shāfi’ī, ath-Thawrī, al-Awzā’ī, al-Layth, Aḥmad, Ishāq, Abī Thawr, and (the Ḥanafī scholars) رَحِمَهُمُ اللهُ, whatever the detachment gains, or the main body gains to the exclusion of the detachment, is shared - as each group supports one another.”

Al-Ḥasan al-Baṣrī رَحِمَهُ اللهُ however differs with the preceding statements arguing that, “If a detachment goes out with the permission of the *Amīr* and wins (*Ghanīmah*), he is to deduct the *Khumus* and whatever is left goes back to the detachment (exclusively). But, if they go out without his permission then whatever they acquire is to be shared between all of the forces.”⁵⁴⁶ While an-Nakh’ī رَحِمَهُ اللهُ deems that if the *Imām* dispatches a detachment, he retains the option to divide it (amongst the whole army) or if he wishes, award (*Nafl*) it all to the detachment.”

It appears - and Allāh ﷻ indeed knows best - that the opinion holding the *Ghanīmah* is to be shared, should be adopted in the

⁵⁴⁵ *Musnad Aḥmad: Musnad ‘Abdullāh ibn ‘Amr* (6692), *Jāmi’ at-Tirmidhī: The Chapters on the Expeditions of the Messenger of Allāh ﷺ* (1585), and al-Bayhaqī’s *Sunan al-Kubrā*. The *Ḥadīth* is *Ṣaḥīḥ*, and its *Isnād* in this narration is *Ḥasan*. Similar narrations are present in *Sunan Abī Dāwūd: The Book of Jihād* (2751), *Sunan ibn Mājah: The Chapters on Blood Money* (2787), and *Sunan an-Nasā’ī: The Book of Oaths, Retaliation and Blood Money* (4734)

⁵⁴⁶ *Al-Awsaṭ* (11/151)

case of the detachments concerned being within supporting distance. However if, like in the case of special operations units, the detachment is dispatched and infiltrates deep into enemy territory without the support (and possibly knowledge) of the main body, then they should keep all of what they capture after the extraction of the *Khumus*. Supporting this is what scholars mention regarding Muslims that venture into *Dār al-Ḥarb* for the purposes of plundering the disbelievers:

In *al-Hidāyah* (2/391) *Imām* al-Mirghanānī رحمه الله states, “If one or two individuals enter *Dār al-Ḥarb* without the permission of the *Imām* and they take something, then it is not subjected to the *Khumus* being deducted.”

Abū Bakr al-‘Abbādī رحمه الله states in his commentary on *al-Hidāyah*, “If one or two individuals enter *Dār al-Ḥarb* without the permission of the *Imām* and they take something, then it is not subjected to the *Khumus* being deducted, because it is not *Ghanīmah*. Since *Ghanīmah* is what is taken by force and not by theft or embezzlement. However, if one or two persons enter with the permission of the *Imām* then there are two opinions. The famous opinion is that it is divided into five portions, four of which goes to the ones who seized it. The second opinion is that it is not divided into five portions because it was taken by means of theft. The first opinion is the strongest because since the *Imām* permitted them, then they have taken it under his protection and not by theft.”

He continues, “If a group possessing force enters and takes something, it is subjected to the *Khumus* being deducted even if they did not seek permission from the *Imām*, because the group has strength and therefore what is taken by them is considered *Ghanīmah*. But if they are a group who does not have a protecting force, and they enter without the permission of the *Imām* then what they take is not considered *Ghanīmah* because *Ghanīmah* is what is taken by force. However these people are

similar to thieves as they steal secretly and therefore whatever they obtain is not considered as *Ghanīmah*. Thus in this case, whatever each individual seizes is for him and no one has a share in it because it is considered as *Mubāh* (permitted) just like hunting or wood gathering.”

Similarly, in *Fath al-Qadīr* (5/509) ibn Humām رحمه الله says, “The opinion of ash-Shāfi’ī, Mālik and the majority of scholars is that whatever an individual takes by means of theft is considered as *Ghanīmah*.” He then says, “But we and *Imām Aḥmad* - according to one of two narrations attributed to him - refuse to call it *Ghanīmah*, as *Ghanīmah* is taken by force and not through theft or embezzlement. And since what the thief takes is by means of deception, then this is considered as a *Ḥalāl* form of sustenance just like wood gathering or hunting.”

Imām Anwar al-Awlaqī رحمه الله said in a *Fatwā* (p.18) requested from the scholars of Yeman regarding operations to acquire wealth in the lands of the disbelievers for the purposes of *Jihād*: “We do not want such a *Fatwā* to be misused by Muslims who are not concerned with *Jihād* and are just interested in improving their own lot. The result of wide misuse of such a *Fatwā* would cause authorities to restrict Muslims and view them with suspicion, which would eventually backfire on the ones who would truly want to serve the cause (of Allāh ﷻ) through such a *Fatwā*.” He later concluded (pgs.22&23), “Careful consideration should be given to the risk vs. benefit (i.e., *Maṣlahah*) of any specific operation. Because of the very negative implications of an operation that is exposed, it is important that the benefits outweigh the risks. For Muslims who are associated with groups that work for *Jihād*, we recommend that the decision to involve oneself in any illegal activity to acquire money from the disbelievers be taken by the *Amīr* and the *Shūrā* (consultative body) of the *Jamā’ah* (Islamic group). We say this because since there is a liability to the *Jamā’ah*, the decision needs to be made by the *Jamā’ah*. We also recommend that the decision on how to

spend the money be left to the *Amīr* and the *Shūrā*. We need to mention however that if the *Jamā'ah* adopt the view that what is seized is considered *Ghanīmah*, then if a percentage less than 80% is to be given to the ones who seized it, that needs to be done with the agreement of the participants of the operation. Because according to the rules of *Ghanīmah* they are entitled to the full 80%. The same is said if the *Jamā'ah* follows the Hanafi opinion.

It is recommended that Muslims who are not associated with groups that work for *Jihād* and who acquire wealth from the disbelievers by illegal means, to donate all that money to the cause of *Jihād* unless if they are in need, then they can take from it accordingly but not to exceed 80%. Islāmic work cannot depend on volunteers. In order to support brothers who are willing to work full-time for Islāmic causes, their income can be taken from wealth seized from the disbelievers. This should be one of the categories in which appropriated money is spent. This is especially important with *Jihād* oriented groups because it is the work chosen only by the best of the best and therefore there is only a small pool of human resources that exists. Therefore, it is important to have as many brothers as possible devote their time to the work rather than spend their prime time seeking a living and only giving their spare time for the work. They should follow the *Sunnah* of the Messenger of Allāh ﷺ and live off the *Ghanīmah*. This is especially important for brothers who are in positions of leadership in their *Jamā'ah*.”⁵⁴⁷

That is to say, the proceeds from such operations are to be dealt with in a way more akin to how *Fay'* is administered. This is in order to mitigate potentially harmful consequences accompanying the vast amounts of wealth generated by relatively small groups, and even individuals, having little to no accountability or systems in place to regulate the behaviour of group members.

⁵⁴⁷ *The Ruling on Dispossessing the Disbelievers' Wealth in Dār al-Ḥarb*

It is most unfortunate, but real-life experience also strongly supports this argument, as abuses and corruption amongst those that have worked in this field are indeed commonplace, as is known.

كيفية قسمة الغنيمة

THE GHANĪMAH AND THE METHOD OF ITS DIVISION

The *Imām* or his deputy begin by deducting the *Salb* and then distributing it to those having a right to it. Then any wealth (previously) belonging to a Muslim or *Dhimmī* should be restored to them. Next, the wages are deducted for those tasked with gathering, transporting, calculating, and guarding - as these people provide a benefit to the *Ghanīmah*. Those who have been beneficial in other ways; such as guides (and the like) should then be compensated for their services, and the remainder is then divided into five equal portions.

The first fifth, *al-Khumus* is sub-divided into another five equal portions according to those whom Allāh ﷻ has mentioned in *Sūrah al-Anfāl* (8:41):

﴿وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَإِنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَلِالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ﴾

And know that anything you obtain of war booty - then indeed, for Allāh is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveller

The breakdown of the *Khumus* is as follows:

- 1) The first fifth is assigned to Allāh and His Messenger ﷺ. During the lifetime of the Prophet ﷺ, he used to spend this portion of the *Khumus* on armour, weapons, and that which was of general benefit for the Muslims. It should likewise today be spent on fortifying the front lines, defences of the Muslims, and on the needs of the fighters who free themselves (i.e. their time) for the purposes of *Jihād*.
- 2) The second is for the near relatives and kin of the Prophet ﷺ; and they are the clans of Banī Hāshim and Banī Muṭṭalib.⁵⁴⁸ Their men, women, rich, and poor all share equally in this category. Although, al-Qurṭubī رحمه الله argues that only their poor should be given, to the exclusion of their rich.⁵⁴⁹
- 3) The third are the orphans - those whose fathers have died or have been killed when they were young. The children of such fathers retain this ruling until they reach the age of maturity. Although, a number of scholars such as ibn Taymiyyah رحمه الله hold that girls are provided for, and as such, take the ruling of orphans until they marry.⁵⁵⁰
- 4) The fourth group are the poor (*al-Masākīn*). They are the needy from amongst the Muslims. Also included within this category are the *Fuqarā'*, those even poorer than the *Masākīn*; who may possess wealth, nevertheless it is insufficient to meet their necessities. Therefore despite them being mentioned as two separate categories in the verse of

⁵⁴⁸ These were sub tribes, or clans, of the tribe of Quraysh

⁵⁴⁹ *Al-Jāmi' li 'Aḥkām al-Qur'ān* (4/375)

⁵⁵⁰ In *al-Mughnī* (6/462, 5088) ibn Qudāmah argues according to the narration in *Sunan Abī Dāwūd* (2873), wherein it is reported that the Prophet ﷺ said:

لَا يُنَمَّ بَعْدَ اخْتِلَامٍ

“The (child is not considered an) orphan after the age of puberty.”

Nevertheless, in ‘*Awn al-Ma'būd* the author raises a number of question about the narrations authenticity. Also refer to *Majmū' al-Fatāwā* (28/586)

Zakāh (9:60), with regards to the *Khumus* they are one and the same.

- 5) The fifth is for the wayfarers, who are those cut off from their wealth (i.e. they have run out of the finances they require in order to complete their journeys, and do not have access, or are unable to have their own wealth transferred to them). As such, they are given in accordance with their needs, even if they happen to be wealthy in their homelands.⁵⁵¹

Division of the *Khumus*



Al-Qurṭubī رحمه الله relates in his *Tafsīr* (4/373) that Abū Ḥanīfah رحمه الله held that upon the death of the Messenger of Allāh ﷺ, the first two categories (i.e. (i) Allāh and His Messenger ﷺ, and (ii) the near relatives of the Prophet ﷺ) ceased being applicable. Thus leaving the *Khumus* to be divided into the three remaining categories. Imām Mālik رحمه الله however considered that the Imām is not restricted to distributing the *Khumus* according to the categories mentioned in the verse (8:41), rather he is at liberty to decide how best to distribute it, and this appears to be a strong

⁵⁵¹ Refer to *al-Mughnī* (6/463) (5090), *Kashshāf al-Qinā'* (3/84-86), *al-Hāwī al-Kabīr* (8/513-515), and *Bidāyah al-Mujtahid* (2/152-154)

argument as it was reported to be the practice of the Companions رضي الله عنهم after the death of the Messenger ﷺ.

The remaining four fifths of the *Ghanimah* is then divided amongst the *Mujāhidīn* that participated in the battle - the *Ghānimīn*, with the infantryman receiving one share and the cavalryman receiving three shares - one for him, and two for the upkeep of his horse (or other means of transport used in combat).⁵⁵²

Ibn ‘Umar رضي الله عنهما narrates in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (2863):

«أَنَّ رَسُولَ اللَّهِ ﷺ جَعَلَ لِلْفَرَسِ سَهْمَيْنِ وَلِصَاحِبِهِ سَهْمًا»، وَقَالَ مَالِكٌ: يُسَهَّمُ لِلْخَيْلِ وَالْبَرَادِينِ مِنْهَا، لِقَوْلِهِ: ﴿وَالْخَيْلَ وَالْبِغَالَ وَالْحَمِيرَ لِتَرْكَبُوهَا﴾ [النحل: 8]، وَلَا يُسَهَّمُ لِأَكْثَرَ مِنْ فَرَسٍ

“Allāh’s Messenger ﷺ allotted two shares for the horse and one for its rider.” Mālik said, “The shares for the Arabian horse and the *Barādhīn*⁵⁵³ are taken from it due to His words: ***And [He created] the horses, mules and donkeys for you to ride***, however there is no additional share for (the fighter having) more than one horse.”⁵⁵⁴

In *al-Awsaṭ* (11/155) ibn Mundhir رحمته الله comments, “According to al-Ḥasan al-Baṣrī, Muḥammad ibn Sīrīn, Makḥūl, and Ḥabīb ibn Abī Thābit, this was the position of ‘Umar ibn ‘Abd al-‘Azīz.

⁵⁵² Infantry refers to forces that are dismantled, i.e. on foot during combat, while Calvery refers to those mounted, i.e. riding during combat. In modern military terminology the terms, mounted and dismounted infantry are used. Amoured divisions would also fall within the category of cavalry, and Allah knows best.

⁵⁵³ According to ibn Ḥajar al-‘Asqalānī, these are cross-bred horses having an Arabian horse as one of their parents

⁵⁵⁴ Also recoded in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1762)

It is similarly the position of the majority of the leading scholars, old and new. From those who held this opinion were Mālik ibn Anas and those accompanying him from the people (scholars) of Madīnah, al-Awzā'ī and those agreeing with him from the people of *ash-Shām*, and Sufyān ath-Thawrī and those with him from the people of Iraq. In addition, al-Layth ibn Sa'd and his followers from the people of *Miṣr* (Egypt), ash-Shāfi'ī and his companions, Aḥmad ibn Ḥanbal, Ishāq ibn Rāhaway, Abū Thawr, Ya'qūb, and Muḥammad. Likewise, we are not aware of anyone from the earlier or later (scholars) who differ with this [...] except an-Nu'mān - meaning, Abū Ḥanīfah - who opposed all of those we have just mentioned, contending, "There is no share for the horse except one." However, even his companions opposed him in this, leaving his opinion disregarded in its opposition to the reports we have mentioned from the Messenger of Allāh ﷺ, and from those after the Messenger of Allāh ﷺ [...]. Additionally, if two fight on one horse, the share (of the horse) is divided between them."

In modern warfare, the horse may be equated to combat vehicles, warplanes, drones and helicopters, armoured personnel carriers (APCs), tanks, crew served weapons, and their likes. This is according to the principle, 'the ruling revolves around the reason for issuing it.'⁵⁵⁵ Since the reason for awarding extra shares to the cavalryman was because of his benefit and usefulness in the type of combat the Messenger of Allāh ﷺ, his Companions رضي الله عنهم, and the *Salaf* رضي الله عنهم were engaged in during their eras, any modern combat vehicle (or weapon) yielding similar benefits to today's *Mujāhidīn* would fall under the same ruling.

For example, the scholars of the past debated as to the specific types (breeds) of horses that would entitle their rider to the share of the cavalryman, and which would not. This argument was centred around the premise that high speed and manoeuvre proved decisive in combat, and were amongst the most beneficial

⁵⁵⁵ In Arabic, the principle is: (الحكم يدور مع علته وجودا وعدمًا)

(worldly) aspects of the Muslims' superiority over their more heavily armoured and supplied, and thus slower, disbelieving adversaries. Consequently, the faster and fitter breeds of horse, such as the Arabian, were prized and qualified for the cavalryman's share of the *Ghanīmah*, while animals such as mules and non-Arabian horses that, although still used in combat by the Muslims, did not due to their being ill-suited for the Muslims' fast and highly manoeuvrable cavalry divisions.⁵⁵⁶

In applying this principle to modern combat, the scholar needs to be familiar with the nature of the conflict in general, but more specifically the nature of the style of combat and area of operations the *Mujāhidīn* are operating with in to be able to give an informed and correct ruling regarding this issue. As such, during the *Mujāhidīn*'s initial conflict with the US-led coalition in the aftermath of their 2001 invasion of Afghanistan, *Mujāhidīn* that participated in the combat informed us that the heaviest weapon they would use was the 14.5mm *Zukiyak* medium machine gun. This was despite the Ṭālibān's (former) Ministry of Defence possessing much heavier and deadlier weapons, such as tanks, APC, artillery, multiple rocketlauncher system (MRLS), and even aircraft. However, the nature of their guerrilla strategy and tactics at the time meant that the heavier weapons were far too impractical and burdensome for the light and fast paced raids and ambushes being carried out. Whereas during the Syrian *Jihād*'s shift to a more conventional style of warfare, tanks, APCs, heavy and anti-aircraft machine guns, Anti-Tank Guided Missiles (ATGMs), artillery, and their likes proved decisive in the *Mujāhidīn*'s battles against their opponents from the apostate Assad regime. Consequently, what was of benefit in the later example was regarded as detrimental in the former, so it can be seen that the ruling is relative to the time and particular situation battles and operations take place in - and Allāh ﷻ knows best.

⁵⁵⁶ Refer to *as-Siyāsah ash-Shar'īyyah* (pp.106-108) and *Tafsīr wa'l-Bayān* (3/1413)

Aṭ-Ṭarīfī said, related to this discussion, the judgements of a number of contemporary scholars is that the 'horses' share of the *Ghanīmah* (i.e. the two shares allotted for the horse) should be given to the group he is fighting with, if they own the heavy weapons or combat vehicles he is operating. As they are the ones responsible for the financial burden of the weapons' cost, ammunition supply, and maintenance, while the operator of the weapon is only responsible for its battlefield operation and maintenance (such as cleaning, clearing any stoppages and misfires, and the like which do not require any financial contribution). Although, if such weapons are the private property and financial 'burden' of the individual *Mujāhid*, then he must be given the full share. This is based on the premise that the two shares for the horse were given, not exclusively as a reward for the horseman, but also to cover his expenditures related to the upkeep of his horse, an expenditure the infantryman does not experience.⁵⁵⁷

That being said, the *Amīr* still retains the prerogative to award the fighter(s) manning such weapons, especially if they play a decisive role in combat, or whose operation carries a high degree of risk and danger, additional 'reward' from the *Nafl*.

السلب

SALB

Salb is the personal belongings of the killed disbeliever, awarded to his Muslim killer, in addition to his (regular) share of the *Ghanīmah*.

⁵⁵⁷ Refer to *Tafsīr wa 'l-Bayān* (3/1413) and *Fiqh al-Jihād* (p.293)

Evidence for this is found in the narration recorded in *Ṣaḥīḥ al-Bukhārī: The Book of Khumus* (3142) wherein the Prophet ﷺ said:

مَنْ قَتَلَ قَتِيلًا لَهُ عَلَيْهِ بَيِّنَةٌ فَلَهُ سَلْبُهُ

“Whoever has killed an enemy and has proof of it, he can take his belongings.”⁵⁵⁸

The scholars have differed over a number of issues in relation to *Salb*, such as:

- Is the killer automatically entitled it, or is it dependant on the prior permission of the *Imām*?
- What exactly is considered as *Salb*?
- Is *Salb* subject to having the *Khumus* deducted from it?

Regarding the first issue, *Imām* Abū Ḥanīfah رَحِمَهُ اللهُ says, “If the *Imām* explicitly permits it, the killer can appropriate it, otherwise he has no entitlement.”

Imām Mālik رَحِمَهُ اللهُ says, “If the *Imām* permits it, then it should be taken from the *Khumus*. If its value does not reach the amount of the *Khumus*, then he is entitled to it. However, if the value exceeds the amount of the *Khumus* he has no entitlement to it from the *Ghanīmah*. While, if the *Imām* does not permit (taking *Salb*) then he (again) has no entitlement.”

Ash-Shāfi’ī and Aḥmad رَحِمَهُمَا اللهُ, in one of two reports from him, state, “The killer is entitled to the *Salb* of the one he killed, taken from the main body of the *Ghanīmah*, whether the *Imām* announces it or not.” However, in the second report from Aḥmad

⁵⁵⁸ Also in *Ṣaḥīḥ al-Bukhārī: The Book of Military Expeditions led by the Prophet* (4321) and *The Book of Judgements* (7170), *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1751), *Jāmi’ at-Tirmidhī: The Book of Military Expeditions* (1562), *al-Muwatta’: The Book of Jihād* (979), and *Sunan Abī Dāwūd: The Book of Jihād* (2717), *Sunan ibn Mājah: The Book of Jihād* (2837), and *Musnad Aḥmad: Musnad al-Anṣār* (22518)

he states, "It is conditional upon the permission of the *Imām* - if he permits, it is for the killer; however if he does not, the killer has no entitlement to it."⁵⁵⁹

As for the issue of whether the *Khumus* is deducted from the *Salb*, the majority of jurists, and the well-known position of the Shāfi'ī School is that the *Salb* is the right of the killer and the *Khumus* is not taken from it. This is due to what has been related by Awf ibn Mālik and Khālid ibn al-Walīd رضي الله عنهما regarding the Prophet ﷺ ruling that the *Salb* is for the killer, without it being subject to deduction of the *Khumus*. In *Ṣaḥīḥ al-Bukhārī: The Book of Khumus* (3142), he ﷺ said:

مَنْ قَتَلَ قَتِيلًا لَهُ عَلَيْهِ بَيِّنَةٌ فَلَهُ سَلْبُهُ

"Whoever has killed an enemy and has proof of it, he can take his belongings."

In opposition to this is the well-known Shāfi'ī position reported by ibn Qudāmah from ibn 'Abbās رضي الله عنهما, al-Awzā'ī, and Makḥūl رضي الله عنهما. They held the *Khumus* is to be deducted from the *Salb* due to the generality of Allāh's words:

﴿وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَإِنَّ لِلَّهِ﴾

***And know that anything you obtain of war booty -
then indeed, for Allāh is one fifth of it***

Similar has been narrated from *Imām* Mālik رحمه الله, although it has also been reported from him that he held the *Imām* has the authority to choose whether or not to deduct the *Khumus* from the *Salb*.

⁵⁵⁹ Refer to *Fiqh al-Jihād* (p.294)

In *Jāmi' at-Tirmidhī: The Book of Military Expeditions* (1562), it is narrated that Sufyān ath-Thawrī رَحِمَهُمُ اللَّهُ said:

وَقَالَ الثَّوْرِيُّ: النَّفْلُ أَنْ يَقُولَ: الْإِمَامُ مَنْ أَصَابَ شَيْئًا فَهُوَ لَهُ، وَمَنْ قَتَلَ قَتِيلًا فَلَهُ سَلْبُهُ، فَهُوَ جَائِزٌ، وَلَيْسَ فِيهِ الْخُمْسُ وَقَالَ إِسْحَاقُ: السَّلْبُ لِلْقَاتِلِ، إِلَّا أَنْ يَكُونَ شَيْئًا كَثِيرًا فَرَأَى الْإِمَامُ أَنْ يُخْرِجَ مِنْهُ الْخُمْسُ، كَمَا فَعَلَ عُمَرُ بْنُ الْخَطَّابِ

“The *Nafl* is when the *Imām* says, ‘Whoever attains something; it is his, and whoever kills a fighter; then his goods are his.’ So it is allowed with there being no *Khumus* taken from it.” (However) Ishāq said, “The goods are for the killer, unless it is a large amount.” At-Tirmidhī commented, “So he saw that the *Imām* could take the *Khumus* from it just as ‘Umar ibn al-Khaṭṭāb did.”⁵⁶⁰

In ash-Shakhasī’s رَحِمَهُمُ اللَّهُ *al-Mabsūt* (10/49) Ishāq رَحِمَهُمُ اللَّهُ is quoted as saying, “If it is a large amount the *Imām* can take the *Khumus* from it, due to what was reported from ibn Sīrīn - that al-Barā’ ibn Mālik duelled Marzabān az-Zārah in (the battle of) Bahrain wherein he speared him breaking his spine. He then took from him his two bracelets along with the rest of his belongings. After ‘Umar prayed the noon prayer he visited Abū Ṭalhah at the latter’s house and said, ‘I have not previously taken the *Khumus* from *Salb*, (however) if the *Salb* of al-Barā’ has amounted to a fortune, I will (indeed) deduct the *Khumus* from it.’ As such, the first *Salb* in Islām to have the *Khumus* deducted from it was the *Salb* of al-Barā’.

It was reported by Sa’īd in *as-Sunan*. Also (reported in *as-Sunan*) that the *Salb* of al-Barā’ amounted to thirty thousand.”⁵⁶¹

⁵⁶⁰ Al-Albānī رَحِمَهُمُ اللَّهُ graded the narration as *Ṣaḥīḥ*

⁵⁶¹ It is not mentioned whether the thirty thousand refers to dinars or dirhams (i.e. gold or silver coins). In any case, if we take the more conservative

As for the question of what exactly is considered as *Salb*, ibn an-Nuḥḥās رحمه الله says in *Mashāri' al-Ashwāq* (pgs.1033&1034), “It is whatever is on the killed; from (his) clothes, footwear, gators, and equipment such as (his) armour and helmet, weapons, mount that he uses for combat or travelling, and whatever is upon it such as its saddlebag, reins and halter [...]. Also, what is upon the killed; from his waistband, bracelets, belt, ring(s), wallet and whatever it contains of money [...]. In addition, whatever is upon (his) horse, from its baggage, and whatever it contains of silver and (other types of) wealth.”

According to ibn Qudāmah رحمه الله, “It is whatever is present (with the dead fighter), from the likes of (his) clothes, turban, hat, belt, (body) armour, helmet. Similarly, from (his) weapons such as the sword, spear, club, bow, knife, and so on, as he relies upon these to fight, and as such his weapons are to be given precedence over his clothing. Likewise is his mount; as he depends on it (in combat), thus it is like a weapon. Nay, even more important and, as opposed to a weapon, it entitles him to an increase in his share (from the *Ghanīmah*). However, the wealth he has with him is not considered as *Salb*, due to it not being from that which is worn or used during fighting. His baggage, utensils, and wealth that does not aid him (in fighting) are likewise not considered as *Salb*.”⁵⁶² However, ibn Ḥazm رحمه الله differs, arguing that the wealth the disbeliever has in his possession is considered as part of the *Salb*,⁵⁶³ and Allāh knows best.

estimate (i.e. 30,000 dirhams), then it would have amounted to approximately 89kg of silver, which according to today's market value would be worth roughly \$41,400

⁵⁶² *al-Mughnī* (9/239), (7375)

⁵⁶³ Refer to *al-Muḥallā* (5/400)

الشروط يستحق القاتل لسلب قتيله

**THE CONDITIONS REQUIRED ENTITLING THE
KILLER TO THE SALB OF THE ONE HE KILLED**

In *Mashāri' al-Ashwāq* (p.1031&1032) ibn an-Nuḥḥās رَحِمَهُ اللهُ summarises the conditions that, according to a number of scholars, must be present in order for the Muslim to be entitled to *Salb*:

- 1) The killed must have been a combatant.
- 2) He must have possessed the ability to fight. As such, the one incapacitated due to injury, sleeping, or who is preoccupied with eating or its likes does not fall within this condition.
- 3) The one entitled to the *Salb* must have been the one that killed the enemy, or inflicted his mortal wound (that subsequently led to his death). Thus, the one who captures an enemy who subsequently dies as a result of injuries he previously sustained on the battlefield is not entitled to his *Salb*, rather the entitlement is for the one who inflicted the injury(s) that ultimately led to the disbeliever's death.
- 4) The killer must have been from those who exerted himself in killing the disbeliever, excluding the one who killed him from afar, like the one who fired an arrow from his fortress, or the one who kills the fleeing disbeliever.

However he continues, “Other scholars say that the *Mujāhid* takes the *Salb* in every situation he kills an enemy combatant, whether the enemy was attacking or retreating. Their evidence is the previously mentioned *Ḥadīth* detailing the story of Salamah (ibn al-Akwa') to support this view.”⁵⁶⁴

⁵⁶⁴ Also in *Mashari al-Ashwaq ila Masari al-Ushaaq (English abridgement)*, (pgs.380&381)

Owing to such evidence and the absence of that which contradicts it, the above seems to be the strongest opinion - and Allāh ﷻ certainly knows best.

In *Fath al-Bārī* (6/249) ibn Ḥajar رَحِمَهُ اللهُ comments on the *Ḥadīth* wherein the Messenger of Allāh ﷺ said:

مَنْ قَتَلَ قَتِيلًا لَهُ عَلَيْهِ بَيِّنَةٌ فَلَهُ سَلْبُهُ

“Whoever has killed an enemy and has proof of it, he can take his belongings.”

“The majority of scholars hold that the killed must be from amongst the fighters (i.e. not from amongst the non-combatant women and children, etc.). And they agree that the claim of a person to *Salb* is not accepted except that there is a witness testifying that the claimant was indeed the killer. The proof for this are the words in the *Ḥadīth*, “and has proof of it.” As such, it is understood that if there is no proof, then his claim is not accepted.” An-Nawawī رَحِمَهُ اللهُ also argues similarly in *al-Minhāj* (4/1831). Ibn Ḥajar later says (6/249), “Ibn ‘Aṭīyyah transmitted that the majority of jurists hold one witness sufficient.”

The author of *‘Awn al-Ma’būd* (7/275) رَحِمَهُ اللهُ likewise holds that, “A witness, even if it is (only) one,” is sufficient proof for the entitlement to *Salb*.

الفَيْءُ

FAY’

Fay’ refers to the wealth of the disbelievers that falls into the hands of the Muslims through means other than fighting.⁵⁶⁵

⁵⁶⁵ Refer to *al-Ḥawā’ al-Kabīr* (8/386)

Shaykh al-Islām ibn Taymiyyah رَحِمَهُ اللهُ elaborates in *as-Siyāsah ash-Shar’iyyah* (pp.117-121) explaining:

“The origin of *Fay*’ is what has been mentioned by Allāh the Exalted in *Sūrah al-Hashr*, that was revealed regarding the battle of Banī Naḍīr that took place after Badr, from His words (59:6-10):

﴿وَمَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْهُمْ فَمَا أَوْجَفْتُمْ عَلَيْهِ مِنْ خَيْلٍ وَلَا رِكَابٍ وَلَكِنَّ اللَّهَ يُسَلِّطُ رُسُلَهُ عَلَى مَنْ يَشَاءُ وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ
٦ مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ
وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ
وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ
اللَّهَ شَدِيدُ الْعِقَابِ ٧ لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ
وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلًا مِنَ اللَّهِ وَرِضْوَانًا وَيَنْصُرُونَ اللَّهَ وَرَسُولَهُ
أُولَٰئِكَ هُمُ الصَّدِيقُونَ ٨ وَالَّذِينَ تَبَوَّءُوا الدَّارَ وَالْإِيمَانَ مِنْ قَبْلِهِمْ يُجْزَوْنَ
مَنْ هَاجَرَ إِلَيْهِمْ وَلَا يَجِدُونَ فِي صُدُورِهِمْ حَاجَةً مِّمَّا أُوتُوا وَيُؤْثِرُونَ
عَلَىٰ أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ وَمَنْ يُوقِ شُحَّ نَفْسِهِ فَأُولَٰئِكَ هُمُ
الْمُقَلَّبُونَ ٩ وَالَّذِينَ جَاءُوا مِنْ بَعْدِهِمْ يَقُولُونَ رَبَّنَا اغْفِرْ لَنَا
وَلِإِخْوَانِنَا الَّذِينَ سَبَقُونَا بِالْإِيمَانِ وَلَا تَجْعَلْ فِي قُلُوبِنَا غِلًّا لِلَّذِينَ
ءَامَنُوا رَبَّنَا إِنَّكَ رَءُوفٌ رَحِيمٌ ١٠﴾

And what Allāh restored [of property] to His Messenger from them - you did not spur for it [in an expedition] any horses or camels, but Allāh gives His messengers power

over whom He wills, and Allāh is over all things competent.

And what Allāh restored to His Messenger from the people of the towns - it is for Allāh and for the Messenger and for [his] near relatives and orphans and the [stranded] traveler - so that it will not be a perpetual distribution among the rich from among you. And whatever the Messenger has given you - take; and what he has forbidden you - refrain from. And fear Allāh; indeed, Allāh is severe in penalty.

For the poor emigrants who were expelled from their homes and their properties, seeking bounty from Allāh and [His] approval and supporting Allāh and His Messenger, [there is also a share]. Those are the truthful.

And [also for] those who were settled in the home [i.e., al-Madīnah] and [adopted] the faith before them. They love those who emigrated to them and find not any want in their breasts of what they [i.e., the emigrants] were given but give [them] preference over themselves, even though they are in privation. And whoever is protected from the stinginess of his soul - it is those who will be the successful.

And [there is a share for] those who came after them, saying, "Our Lord, forgive us and our brothers who preceded us in faith and put not in our hearts [any] resentment toward those who have believed. Our Lord, indeed You are Kind and Merciful."

As such, He ﷺ mentioned the *Muhājirīn* (emigrants), the *Anṣār* (helpers), and those coming after them according to the characteristics mentioned in the third group - everyone that follows them possessing the aforementioned characteristics until the Day of Judgement. Similar to how they appear in His words:

﴿وَالَّذِينَ آمَنُوا مِنْ بَعْدُ وَهَاجَرُوا وَجَاهَدُوا مَعَكُمْ فَأُولَٰئِكَ مِنْكُمْ﴾

And those who believed after [the initial emigration] and emigrated and fought with you - they are of you.⁵⁶⁶

His words:

﴿وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ﴾

and those who followed them with good conduct⁵⁶⁷

And His words:

﴿وَأَخْرَجَ مِنْهُمْ لِمَا يَلْحَقُوا بِهِمْ وَهُوَ الْعَزِيزُ الْحَكِيمُ﴾

And [to] others of them who have not yet joined them. And He is the Exalted in Might, the Wise.⁵⁶⁸

And the meaning of His words “*you did not spur for it [in an expedition] any horses or camels,*” is that you did not move (i.e. maneuver against your enemy), neither did you ride any horses or camels (into battle). Accordingly, the jurists say that *Fay*’ is what is acquired from the disbelievers without a fight, as ‘riding horses or camels’ alludes to combat.

It is called *Fay*’ due to Allāh restoring it from the disbelievers to the Muslims, as the basic rule (*Aṣl*) is that Allāh, the Most High, created money only to assist (its owners in) His worship. Therefore, those who disbelieve in Him permit their selves, with which they do not

⁵⁶⁶ *Sūrah al-Anfāl* (8:75)

⁵⁶⁷ *Sūrah at-Tawbah* (9:100)

⁵⁶⁸ *Sūrah al-Jumu’ah* (62:3)

worship Him, and their wealth, with which they do not use to assist them in worshipping Him, for His believing slaves who worship Him. Thus, He returned to them that which they deserve, just as He returns to the person whose inheritance was wrongfully taken, even if he had not previously possessed it (i.e. the inheritance wealth) ...”⁵⁶⁹

[End of ibn Taymiyyah quote]

Therefore, while *Ghanimah* and *Salb* are gained directly through combat, *Fay'* is obtained through other means, such as when the disbelievers, hearing about the Muslims advance, flee leaving behind their wealth and. There is five types of wealth that fall within the category of *Fay'*:

- 1) The above example (i.e. when the disbelievers flee from the Muslims prior to their arrival and this, according to ibn Rajab al-Ḥanbalī رَحِمَهُ اللَّهُ, is what the Messenger ﷺ was alluding to when he said:

وَجُعِلَ رِزْقِي تَحْتَ ظِلِّ رُمْحِي

“My sustenance has been placed beneath the shade of my spear.”⁵⁷⁰

- 2) Al-*‘Āshir*; a tax levied upon disbelieving traders who wish to conduct business in *Dār al-Islām*
- 3) The *Jizyah*
- 4) Al-*Kharāj*; a tax levied upon those who work the land in the areas conquered by the Muslims, irrespective of whether they be believers or disbelievers
- 5) The wealth that the *Dhimmī*, Muslim, or those similar to them⁵⁷¹ leave behind when they die and have no heirs

⁵⁶⁹ Also in *Majmū' al-Fatāwā* (28/274-276)

⁵⁷⁰ *Jāmi' aṣ-Ṣaḡhīr* (2828), (aka. *Sunan at-Tirmidhī*). Adh-Dhahabī declared it *Ṣaḡhīh* in *Siyar 'Alām an-Nubalā* (15/509), as did Aḥmad Shākir in his *Takhrīj of Musnad Aḥmad*, and also by al-Albānī in his *Ṣaḡhīh al-Jāmi'* (2831). Refer ibn Rajab's *I was Sent with the Sword* (pp.49-61)

⁵⁷¹ Included in this category is the wealth left behind by the apostate

Scholars have differed as to whether the *Khumus* is to be deducted from *Fay'*. The majority from the Ḥanafī and Malikī schools hold that it is not subject to the deduction of the *Khumus*. They also say the *Fay'* should be spent according to the *Imām's* discretion upon whatever yields the greatest benefit for the Muslims. However, the Shāfi'ī school and al-Kharqī (al-Ḥanbalī), according to one of two reports from Aḥmad رَحِمَهُمُ اللَّهُ, hold that the *Khumus* is to be subtracted and distributed as it is in the case of (the *Khumus* from) the *Ghanīmah*. The remaining four-fifths are to be spent on the salaries of the soldiers in the states army. Another report from ash-Shāfi'ī رَحِمَهُمُ اللَّهُ argues that its expenditure is not restricted to the salaries of the fighters; rather it can be spent according to wherever the Muslim's overriding benefit lays.

In *al-Mughnī* (6/463) ibn Qudāmah رَحِمَهُمُ اللَّهُ says, “Al-Qāḍī says those entitled to the *Fay'* are the people of *Jihād*; from the *Murābiṭīn* guarding the borders, the (regular) soldiers, and those in their service (i.e. those working in logistical and support roles). This is due to the victory and (overall) benefit (for Islām) coming about through the Prophet ﷺ during his lifetime. However after his death, the Muslims are (most) in need of the (regular) *Mujāhidīn*, and thus the *Fay'* is for them exclusively. As for the bedouins and those like them that do not present themselves for *Jihād*, they have no entitlement to the *Fay'*. Likewise, (not entitled) are those who volunteer themselves for *al-Ghazū* (offensive *Jihād*) as they are given from the share of the *Ṣadaqah* (i.e. *Zakah*) allocated for those **in the cause of Allāh**.⁵⁷²

⁵⁷² Ibn Qudāmah is referring to Allāh's words in *Sūrah at-Tawbah* (9:60):

﴿إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغُرَمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ﴾

He said (al-Qādī رحمه الله) and the meaning of Aḥmad's words, 'It is between the rich and the poor,' is that the 'rich' is the one that serves a benefit for the Muslims; from the *Mujāhidīn*, judges, and *Fuqahā'* (jurists). It is also possible to understand from his words that it refers to every Muslim who, through this wealth (i.e. from the *Fay'*), renders a benefit for all of the Muslims. Such as the benefit realised through the constructing of bridges, waterways, and roads that improve the (overall) state (of the Muslims). Additionally, it is indicated from the context of his speech that the *Fay'* is not restricted solely for the army, rather it is to be spent on whatever is most beneficial for the Muslims. However, it should begin (i.e. be given priority) with the soldiers of the Muslims as they, due to their protecting the Muslims, are from the most important of the *Ummah's* needs and consequentially should be given that which satisfies their needs. Then that which is next in priority, followed by those next in priority, and so on, from maintaining the front lines and providing them with sufficient weapons and horses. Then that which is next in priority, from the maintenance of the mosques, canals, roads, sustaining the judges, *Imāms*, *Mu'adhinīn* (i.e. those that call the *Adhān*), and *Fuqahā'*. Similarly, are those Muslims who possess a benefit. Two similar statements to what we have mentioned are (likewise) reported from ash-Shāfi'ī.”

Shaykh al-Islām ibn Taymiyyah رحمه الله says in *Majmū' al-Fatāwā* (28/565&567), “As for the expenditure of the *Fay'* after the death of the Prophet ﷺ it has been agreed upon by the scholars

Zakah expenditures are only for the poor and for the needy and for those employed to collect [Zakah] and for bringing hearts together [for Islām] and for freeing captives [or slaves] and for those in debt and for the cause of Allāh and for the [stranded] traveler - an obligation [imposed] by Allāh. And Allāh is Knowing and Wise.

Additionally, it is also common that those who volunteer for offensive operations gain *Ghanīmah*, whilst those assigned to (full-time) *Ribāṭ* (guard) duty, in general, do not have the opportunity to sustain themselves from the *Ghanīmah*, and are thus more prone to being dependant upon a salary from the state (or group)

that it should be spent sustaining those fighting the disbelievers. As in their strengthening is the disgracing of the disbelievers, and thus (more) *Fay'* will be taken from them. (Scholars) have disputed as to whether it is to be spent on the rest of the areas in which there is benefit for the Muslims, or it is exclusively for the fighters. There are two statements from ash-Shāfi'ī, and likewise two stances from *Imām* Aḥmad. However that which is well known to be his opinion, and likewise the stance of Abū Ḥanīfah and Mālik, is that it is not exclusively for the fighters. Rather, it can be spent on everything beneficial for the Muslims.”

التنفيذ

NAFL

Linguistically the word *Nafl* refers to the *Ghanīmah*, or something additional. As such, the *Ghanīmah* is *Nafl* because it is an addition to that which the *Mujāhidīn* originally had before they set off for battle. Allāh ﷻ uses the (plural of the) word in this sense in the first verse of *Sūrah al-Anfāl*:

﴿يَسْأَلُونَكَ عَنِ الْأَنْفَالِ﴾

They ask you, [O Muḥammad], about al-Anfāl (i.e. the Ghanīmah).

According to the *Sharī'ah*, it refers to an addition to the regular share of *Ghanīmah* coming about due to the order of the *Imām* or *Amīr* of the *Mujāhidīn*, that will be awarded *Nafl* (i.e. additional wealth from the *Ghanīmah*, in addition to the fighters regular share) to whoever does a particular task during the course of an operation.

Its origins can be traced back to a narration in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1749) in which ibn ‘Umar رَضِيَ اللَّهُ عَنْهُمَا reported:

بَعَثَ رَسُولُ اللَّهِ ﷺ سَرِيَّةً إِلَى نَجْدٍ، فَخَرَجْتُ فِيهَا، فَأَصَبْنَا إِبِلًا وَغَنَمًا، فَبَلَغَتْ سُهْمَانُنَا اثْنِي عَشَرَ بَعِيرًا، اثْنِي عَشَرَ بَعِيرًا، وَنَفَّلَنَا رَسُولُ اللَّهِ ﷺ بَعِيرًا بَعِيرًا

“The Messenger of Allāh ﷺ dispatched a detachment in which I was present towards Najd. We captured a large amount of camels and wealth, with each fighters’ share being twelve camels. The Messenger of Allāh ﷺ then gave us each an extra camel as *Nafl*.”⁵⁷³

According to the majority of scholars, the *Nafl* can take three forms:

- 1) The *Imām* can dispatch a detachment towards the enemy from the main body of the army, saying that if they capture any *Ghanīmah*, they are entitled to a third, or quarter of it (or less).

An example of this was seen during the caliphate of ‘Umar رَضِيَ اللَّهُ عَنْهُ when he offered the tribe of Bajīlah a quarter of any *Fay*’ gained in addition to their share of the *Ghanīmah* (as an incentive for them to go to Iraq (instead of *ash-Shām*)).⁵⁷⁴ He likewise distributed the *Khumus* amongst the fighters as a reward for their

⁵⁷³ Similar reports are also narrated in *Ṣaḥīḥ al-Bukhārī: The Book of the Battles led by the Prophet ﷺ* (4338). It appears that the repetition of the words ‘twelve camels’ in the Arabic text is intentional (and not a mistake in narration or a misprint), and is to emphasise on the fact that the share of camels for each fighter was indeed twelve camels, as in a number of the other versions of this narration there is some doubt as to whether the share was eleven or twelve camels, and Allāh knows best

⁵⁷⁴ Refer to *at-Tārīkh ar-Rusul wa’l-Mulūk* (3/462) and *The Muslim Conquest of Persia* (p.41)

sacrifices, after Allāh granted them victory over the Persians at Qādisiyah.⁵⁷⁵

- 2) Without specifying beforehand the *Amīr* can grant extra *Ghanimah* to an individual, or group, as a reward for their courageousness or otherwise beneficial conduct in the course of an operation. Such as the Prophet ﷺ did in the previous narration of ibn ‘Umar رَضِيَ اللَّهُ عَنْهُمَا.
- 3) The *Amīr* can state beforehand, that anyone who does a particular action will receive a certain amount as an incentive, or reward.

An example of this type of *Nafl* could be that the *Amīr* specifies a reward for anyone who is able to eliminate a particular enemy sniper that has been causing the *Mujāhidīn* great difficulty for several months. Or, to the individual or group able to assassinate the enemy’s leader(s).

However, Mālik and his companions رَضِيَ اللَّهُ عَنْهُمْ disliked this last type, regarding it as something that could lead to the corruption of the intention of the *Mujāhidīn*, which may in turn lead to them taking unnecessary risks in pursuit of wealth. As such, they refer to the words of ‘Umar ibn al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ:

لَا تَقْدَمُوا جَمَاعِمُ الْمُسْلِمِينَ إِلَى الْحُصُونِ، لِمُسْلِمٍ أَسْتَبْقِيَهُ أَحَبُّ إِلَيَّ
مِنْ حُصْنٍ أَفْتَحَهُ

“Do not give preference to (conquering) the fortresses (of the enemy) over the lives of the Muslims; and for me it is more

⁵⁷⁵ Refer to ‘Umar ibn al-Khaṭṭāb: *His Life and Times* (2/206&207)

beloved that a single Muslim is spared death, than for an (enemy) fortress to be conquered.”⁵⁷⁶

محل التنفيل

THE PLACE FROM WHICH THE NAFL IS EXTRACTED

It is permissible for the *Imām* to take the *Nafl* from the Muslim treasury (*Bayt al-Māl*) on the condition that the exact amount and type of wealth is specified beforehand. Likewise, if a need for it exists, he may specify an amount (i.e. a fraction or percentage) from what the *Mujāhidīn* are expected to take as *Ghanīmah* in an upcoming battle or operation.

If it is taken from the *Ghanīmah*, the jurists have differed over where exactly it should be taken from. The Ḥanbalī and some of the Shāfi'ī scholars hold that it is to be taken from the four-fifths (i.e. the *Ghanīmah* after the *Khumus* has been deducted). This was the stance of Anas ibn Mālik رضي الله عنه and the jurists of *ash-Shām*, such as Makhūl, al-Qāsim ibn 'Abd ar-Raḥmān, al-Awzā'ī, and it was also the opinion of Ishāq and Abū 'Ubayd رضيهم الله. The evidence they relied upon is the words of the Prophet ﷺ:

لَا نَفْلَ إِلَّا بَعْدَ الْخُمْسِ

“There is no *Nafl*, except after the *Khumus* has been deducted.”⁵⁷⁷

⁵⁷⁶ Refer to *at-Tabṣirah* (3/1412). Sa'īd ibn Manṣūr relates a similar narration in his *Sunan: Kitāb al-Jihād* (2585) that 'Umar ibn al-Khaṭṭāb said to Abū Mūsā رضي الله عنه:

مَا أَحَبُّ أَنْ تُفْتَحَ قَرْيَةٌ فِيهَا أَلْفٌ بِضَيَاعِ رَجُلٍ مُسْلِمٍ

“It is not more beloved to me that you open a town with a thousand occupants, than the loss of one Muslim.”

⁵⁷⁷ *Sunan Abī Dāwūd: The Book of Jihād* (2753) and *Musnad Aḥmad* (15900). Al-Albānī declared it authentic in his *Ṣaḥīḥ al-Jāmi'* (13510)

The Ḥanafī School holds that if the *Imām* specifies it during combat, it can be taken from the four-fifths of the *Ghanīmah*. However, if specified after the *Ghanīmah* has been captured, it can only be taken from the *Khumus*.

The Mālikī scholars view that it is taken from the *Khumus*.

While the Shāfi'ī position, according to what seems correct, is that it should be taken from a fifth of the *Khumus* (i.e. the fifth designated for Allāh and His Messenger ﷺ). Although, according to another statement from them, it is to be taken from the *Ghanīmah* before the *Khumus* is deducted.

قَدْرُ النَّفْلِ

THE AMOUNT THAT CAN BE GIVEN AS NAFL

Scholars agree that the *Imām* may decide to award up to a third of the *Ghanīmah* after the *Khumus* has been deducted due to a narration recorded by Abū Dāwūd رحمه الله in his *Sunan: The Book of Jihād* (2749) wherein Ḥabīb ibn Maslamah رحمه الله narrates:

أَنَّ رَسُولَ اللَّهِ ﷺ كَانَ يُنْفِلُ الرَّبْعَ بَعْدَ الْخُمْسِ، وَالثُّلُثَ بَعْدَ الْخُمْسِ إِذَا قَفَلَ

“The Messenger of Allāh ﷺ used to award a fourth after the *Khumus* was deducted, and a third after the *Khumus* if it (i.e. the Muslims) was on a return journey (from battle).”⁵⁷⁸

⁵⁷⁸ Also in *Musnad Aḥmad* (17500). Al-Albānī classified the *Ḥadīth* as *Ṣaḥīḥ* in his *Ṣaḥīḥ wa Ḍa'īf Abī Dāwūd* (2739). Scholars mention the wisdom behind this being that, since most fighters' hearts more are attached to their family and homes upon a return journey from an operation or campaign, they are less likely to be as enthusiastic to volunteer to undertake additional

حكم الغلول والأخذ من الغنيمة قبل قسمها

THE RULING OF GHULŪL AND TAKING FROM THE GHANĪMAH PRIOR TO ITS DIVISION

In *Mashāri' al-Ashwāq* (p.797) ibn an-Nuḥḥās رَحِمَهُ اللَّهُ states *Ghulūl* is, “Whatever is taken from the *Ghanīmah*, *Wājib* to divide amongst the army, by the *Amīr* of the army or one of the fighters, without taking it to the one responsible for the division of the *Ghanīmah*. There is no distinction made between a large or small amount.”

In *an-Nihāyah* (3/380) ibn Athīr رَحِمَهُ اللَّهُ states, “It is treachery concerning the *Ghanīmah*, and to steal from it prior to its division.”

“The scholars have a consensus upon its prohibition,” as mentioned by ibn Ḥazm رَحِمَهُ اللَّهُ in *Marātib al-Ijmā'* (p.116). From the texts indicating its prohibition is the *Ḥadīth* of Buraydah رَضِيَ اللَّهُ عَنْهُ recorded in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1731):

Whenever the Messenger of Allāh ﷺ appointed a leader of a detachment he would exhort him to fear Allāh and to be good to the Muslims who were with him. He ﷺ would say:

اغْزُوا بِاسْمِ اللَّهِ فِي سَبِيلِ اللَّهِ، قَاتِلُوا مَنْ كَفَرَ بِاللَّهِ، اغْزُوا وَلَا تَعْلُوا، وَلَا تَغْدِرُوا، وَلَا تَمْتَلُوا، وَلَا تَقْتُلُوا وَلِيدًا

missions at such a time. Accordingly, a greater incentive is presented in order to encourage them -and Allāh knows best

“Fight in the name of Allāh, for the sake of Allāh. *Do not embezzle the spoils*; do not break your pledge; do not mutilate (the dead) bodies, and do not kill children...”⁵⁷⁹

Ibn Kathīr رَحِمَهُ اللهُ narrates in his *Tafsīr* (4/319&320) regarding the noble verse in *Sūrah al-Anfāl* (8:41) that after leading the prayer the Prophet ﷺ held a pelt of camel between his fingers and said to his Companions رَضِيَ اللهُ عَنْهُمْ:

«إِنَّ هَذِهِ مِنْ غَنَائِمِكُمْ وَإِنَّهُ لَيْسَ لِي فِيهَا إِلَّا نَصِيبِي مَعَكُمْ الْخُمْسُ، وَالْخُمْسُ مَرْدُودٌ عَلَيْكُمْ، فَأَذُوا الْخَيْطَ وَالْمَخِيطَ، وَأَكْبَرُ مِنْ ذَلِكَ وَأَصْغَرُ، وَلَا تَعْلُوا فَإِنَّ الْعُلُولَ عَارٌ وَنَارٌ عَلَى أَصْحَابِهِ فِي الدُّنْيَا وَالْآخِرَةِ، وَجَاهِدُوا النَّاسَ فِي اللَّهِ الْقَرِيبَ وَالْبَعِيدَ، وَلَا تُبَالُوا فِي اللَّهِ لَوْمَةً لَا تَمُوتُ، وَأَقِيمُوا حُدُودَ اللَّهِ فِي السَّفَرِ وَالْحَضَرِ، وَجَاهِدُوا فِي اللَّهِ، فَإِنَّ الْجِهَادَ بَابٌ مِنْ أَبْوَابِ الْجَنَّةِ عَظِيمٌ، يُنْجِي اللَّهُ بِهِ مِنَ الْهَمِّ وَالْغَمِّ»

“This is also a part of the Ghanimah you earned. Verily, I have no share in it except my own share - the fifth designated to me. Even that fifth will be given back to you (indicating the Prophet’s ﷺ generosity). Therefore, surrender even the needle and the thread, in addition to whatever is bigger or smaller than that (from the Ghanimah). Do not cheat with any of it, for stealing from the Ghanimah before its distribution is Fire and a shame on its people in this life and the Hereafter. Perform Jihād against the people in Allāh’s Cause, whether they are near or far, and do not fear the blame of the blamers as long as you are in Allāh’s Cause. Establish Allāh’s Laws while in your area and while traveling. Perform Jihād in Allāh’s cause, for Jihād is a tremendous door from the doors leading to Paradise. Through it, Allāh saves (one) from sadness and grief.”

⁵⁷⁹ Also in *Sunan ibn Mājah: The Book of Jihād* (2967), *al-Muwatta’*: *The Book of Jihād* (972), and *Sunan Abī Dāwūd: The Book of Jihād* (2613)

Ibn Kathīr رَحِمَهُ اللَّهُ comments, “This is a tremendous *Ḥadīth*, but I did not find it in any of the six collections of *Ḥadīth*⁵⁸⁰ through this chain of narration. However *Imām* Aḥmad, Abū Dāwūd and an-Nasā’ī recorded a *Ḥadīth* from ‘Amr bin Shu’ayb, from his father, from his grandfather ‘Abdullāh bin ‘Amr, from the Messenger of Allāh ﷺ, and this narration is similar to the one above, and a version from ‘Amr bin ‘Anbasah was (also) recorded by Abū Dāwūd and an-Nasā’ī.”

Likewise, the *Ḥadīth* recorded in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (3073) highlights the severe prohibition of *Ghulūl*, explaining the noble verse (3:161):

﴿وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَمَةِ﴾

And whoever betrays, [taking unlawfully], will come with what he took on the Day of Resurrection.

Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ said:

قَامَ فِينَا النَّبِيُّ ﷺ، فَذَكَرَ الْغُلُولَ فَعَظَّمَهُ وَعَظَّمَ أَمْرَهُ، قَالَ: "لَا أُلْفِينَ أَحَدَكُمْ يَوْمَ الْقِيَامَةِ عَلَى رَقَبَتِهِ شَاةٌ لَهَا تُغَاءٌ، عَلَى رَقَبَتِهِ فَرَسٌ لَهُ حَمَحَمَةٌ، يَقُولُ: يَا رَسُولَ اللَّهِ أَغْنِنِي، فَأَقُولُ: لَا أَمْلِكُ لَكَ شَيْئًا، قَدْ أَبْلَغْتُكَ، وَعَلَى رَقَبَتِهِ بَعِيرٌ لَهُ رُغَاءٌ، يَقُولُ: يَا رَسُولَ اللَّهِ أَغْنِنِي، فَأَقُولُ: لَا أَمْلِكُ لَكَ شَيْئًا قَدْ أَبْلَغْتُكَ، وَعَلَى رَقَبَتِهِ صَامِتٌ، فَيَقُولُ: يَا رَسُولَ اللَّهِ أَغْنِنِي، فَأَقُولُ لَا أَمْلِكُ لَكَ شَيْئًا قَدْ أَبْلَغْتُكَ، أَوْ عَلَى رَقَبَتِهِ رِقَاعٌ تَخْفِقُ، فَيَقُولُ: يَا رَسُولَ اللَّهِ أَغْنِنِي، فَأَقُولُ: لَا أَمْلِكُ لَكَ شَيْئًا، قَدْ أَبْلَغْتُكَ" وَقَالَ أَيُّوبُ: عَنْ أَبِي حَيَّانَ: فَرَسٌ لَهُ حَمَحَمَةٌ

⁵⁸⁰ The ‘six books’ are: *Ṣaḥīḥ al-Bukhārī*, *Ṣaḥīḥ Muslim*, and the ‘four *Sunan*’: *Jāmi’ at-Tirmidhī*, *Sunan Abī Dāwūd*, *Sunan ibn Mājah*, and *Sunan an-Nasā’ī*

The Prophet ﷺ got up amongst us and mentioned *al-Ghulul*, emphasized its magnitude, and declared that it was a great sin saying: *“Do not commit Ghulul, for I should not like to see anyone amongst you on the Day of Resurrection carrying a bleating sheep or a neighing horse on his neck. Such a man will be saying, ‘O Messenger of Allāh! Intercede with Allāh for me,’ and I will reply, ‘I cannot help you, for I have conveyed Allāh’s Message to you.’ Neither would I like to see a man carrying a grunting camel on his neck. Such a man will say, ‘O Messenger of Allāh! Intercede with Allāh for me,’ and I will say, ‘I cannot help you for I have conveyed Allāh’s Message to you.’ Or, one carrying gold and silver over his neck saying, ‘O Messenger of Allāh! Intercede with Allāh for me,’ and I will say, ‘I cannot help you for I have conveyed Allāh’s Message to you.’ Or one carrying clothes that will be fluttering, and the man will say, ‘O Messenger of Allāh! Intercede with Allāh for me.’ And I will say, ‘I cannot help you, for I have conveyed Allāh’s Message to you.’”*

Ibn Baṭṭāl رَحِمَهُ اللهُ says in his commentary on *Ṣaḥīḥ al-Bukhārī* (5/233&234), “Muhallab said, ‘This *Ḥadīth* comes in the form of a severe threat from Allāh to whoever He punishes from those who commit *Ghulul*. His punishment is that he will be forced to carry the camel, or whatever else he stole upon his neck in front (of all the creation) as a humiliation. Then Allāh will choose whether to punish him with the Fire or to pardon him - and if He punishes with the Fire, he will eventually be interceded for - if Allāh wills. While if he does not punish with the Fire - His forgiveness is all-encompassing.’ His words, ‘*I am not able to avail you of anything in front of Allāh,*’ means with forgiveness or intercession, until Allāh permits him to intercede for whom He wills, as He says (21:28):

﴿وَلَا يَشْفَعُونَ إِلَّا لِمَنِ ارْتَضَىٰ﴾

***They cannot intercede except on behalf of one whom
He approves.***

(Also) from the *Hadīth* is (the principle) that the punishment comes from the same origin as the sin,⁵⁸¹ and as such, the *Hadīth* explains His words (3:161):

﴿يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَمَةِ﴾

***(he) will come with what he took on the Day of
Resurrection.***

Additionally, he will come carrying it upon his neck so as to maximise his humiliation and to make evident his crime to those witnessing it (i.e.all of the creation). Therefore, the enormity of this sin should be enough of a warning for his *Ummah* ﷺ.”

However, Ibn an-Nuḥḥās رَحِمَهُ اللهُ considers the punishment even more severe, mentioning in *Mashāri' al-Ashwāq* (p.807), “The Prophet ﷺ did not pray (the funeral prayer) upon those who committed *Ghulūl* (whilst) in the Cause of Allāh even if it was concerning something insignificant, to emphasise on its prohibition and sin. Indicating, like he ﷺ was prohibited in this world, he will be prohibited from interceding (for the one guilty of *Ghulūl*) in the Hereafter.”

Al-Bayhaqī records in *Sunan al-Kubrā* (12862) that ‘Abdullāh bin Shaqīq رَحِمَهُ اللهُ narrates from a man from Balqīn رَحِمَهُ اللهُ who said:

وَرَوَى الْبَيْهَقِيُّ عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ , عَنْ رَجُلٍ مِنْ بَلَقَيْنٍ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ وَهُوَ بِوَادِي الْقُرَى وَهُوَ يَعْزُضُ فَرْسًا، فَقُلْتُ: يَا رَسُولَ اللَّهِ، مَا تَقُولُ فِي الْغَنِيمَةِ؟ قَالَ: لِلَّهِ خُمُسُهَا، وَأَرْبَعَةُ أَخْمَاسٍ لِلْجَيْشِ. قُلْتُ:

⁵⁸¹ In Arabic the principle is (الجزاء من جنس العمل)

فَمَا أَحَدٌ أَوْلَىٰ بِهِ مِنْ أَحَدٍ؟ قَالَ: لَا , وَلَا السَّهْمُ تَسْتَخْرِجُهُ مِنْ جَنْبِكَ
لَيْسَ أَنْتَ أَحَقُّ بِهِ مِنْ أَخِيكَ الْمُسْلِمِ

“I went to the Messenger of Allāh ﷺ when he is in Wādī al-Qurā and he was examining a horse. I asked him, “O Messenger of Allāh what do you say about the *Ghanimah*?” He said, “*To Allāh belongs one fifth of it. The rest belongs to the army,*” I said, “So no one has a priority in it over someone else?” He replied, “*No, you don’t even have right of ownership over an arrow that you pull out from your own body.*” ⁵⁸²

As-Subkī رَحِمَهُ اللَّهُ says in *Fatāwā as-Subkī* (2/345), “The scholars say that the reason *al-Ghulūl* is so severe is that the *Ghanimah* is something Allāh awards us as a charity from Himself in His words (8:1):

﴿يَسْأَلُونَكَ عَنِ الْأَنْفَالِ قُلِ الْأَنْفَالُ لِلَّهِ وَالرَّسُولِ﴾

They ask you about the bounties [of war]. Say, “The [decision concerning] bounties is for Allāh and the Messenger.”

Thus, whoever commits *Ghulūl* has opposed Allāh. In addition, the *Mujāhidīn* prepare themselves for *Jihād* and are steadfast upon their stance (in the battlefield) with the knowledge that the *Ghanimah* will be divided amongst them. Therefore if someone steals from it, they will fear that nothing will remain of it from their shares, and will thus flee towards it, and this will be a betrayal for the *Mujāhidīn* and a reason for their defeat. Like what occurred on the day of Uḥud when they (i.e. the archers) suspected the same (i.e. that there would be no share left for

⁵⁸² Ibn Kathīr authenticated it in his *Tafsīr* on the verse (8:41), and adh-Dhahabī likewise strengthened it

them). Accordingly, the enormity of (the act of) *Ghulūl* is not like (i.e. it dwarfs) other types of treachery and theft...”⁵⁸³

As has been mentioned, the food and provisions of the enemy the *Mujāhidīn* consume or feed to their animals does not fall under

⁵⁸³ On the day of Uhud, despite the Prophet ﷺ appointing fifty archers to provide overwatch, protecting the Muslims' flank and rear, and ordering them emphatically not to desert their positions regardless of the outcome of the battle. Forty of them left their positions, thinking the battle was a foregone conclusion and fearing that if they did not collect their share of the *Ghanīmah*, nothing would remain for them after the battle. Thus, Allāh ﷻ punished the entire Muslim army for their disobedience stemming from their desire for wealth, and their misgivings regarding the distribution of the *Ghanīmah*. He commented on the incident in *Sūrah Āl 'Imrān* (3:152) saying:

﴿وَلَقَدْ صَدَقَكُمُ اللَّهُ وَعْدَهُ إِذْ تَحُسُونَهُمْ بِإِذْنِهِ حَتَّى إِذَا فَشِلْتُمْ وَتَنَزَّعْتُمْ فِي الْأَمْرِ وَعَصَيْتُمْ مِمَّا بَعَدَ مَا أَرْسَلَكُمْ مَا تُحِبُّونَ مِنْكُمْ مَنْ يُرِيدُ الدُّنْيَا وَمَنْ يُرِيدُ الْآخِرَةَ ثُمَّ صَرَفَكُمْ عَنْهُمْ لِيَبْتَلِيَكُمْ﴾

And Allāh had certainly fulfilled His promise to you when you were killing them [i.e., the enemy] by His permission until [the time] when you lost courage and fell to disputing about the order [given by the Prophet] and disobeyed after He had shown you that which you love. Among you are some who desire this world, and among you are some who desire the Hereafter. Then he turned you back from them [defeated] that He might test you.

Indeed, *Ghulūl* affects the overall morale of the *Mujāhidīn* during the most critical time - combat. In addition, *Ghulūl* is a crime that prevents the offender from attaining martyrdom, even if he is killed by the disbelievers whilst waging *Jihād* in the Cause of Allāh, as indicated by the following narration recorded in *Sahīh Muslim* (114) wherein ‘Umar رضي الله عنه narrated:

لَمَّا كَانَ يَوْمُ خَيْبَرَ، أَقْبَلَ نَفَرٌ مِنْ صَحَابَةِ النَّبِيِّ ﷺ، فَقَالُوا: فُلَانٌ شَهِيدٌ، فُلَانٌ شَهِيدٌ، حَتَّى مَرُّوا عَلَى رَجُلٍ، فَقَالُوا: فُلَانٌ شَهِيدٌ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «كَلَّا، إِنِّي رَأَيْتُهُ فِي النَّارِ فِي بُرْدَةٍ غَلَّهَا - أَوْ عَبَاءَةٍ»

“On the day (battle) of Khaybar, several Companions of the Messenger of Allāh ﷺ came to him and said, ‘So-and-so has died as a martyr; so-and-so has died as a martyr.’ When they mentioned a certain man that died as a martyr, the Messenger of Allāh said, ‘No. I have seen him in the Fire because of a robe that he stole (from the *Ghanīmah*).’”

the ruling of *Ghulūl* and its prohibition, as long as its consumed in the land of the enemy and taken according to necessity. Likewise are the utensils, firewood, clothing, weapons, and other necessities fighters require during the course of the battle. However, anything remaining afterwards must be returned to the *Ghanīmah*, as it is not the property of the fighter, rather it was only borrowed due to a need.⁵⁸⁴

عقوبة الفال

THE PUNISHMENT FOR THE ONE WHO COMMITS GHULŪL

Scholars have differed as to the exact nature of the (worldly) punishment for the one who commits *Ghulūl*.

Makhūl, al-Ḥasan, and al-Awzā'ī رَحِمَهُمُ اللَّهُ hold that the belongings and baggage of the thief should be burnt (except for what was stolen, which should be returned to the *Ghanīmah* collection). Al-Awzā'ī says, “Except for his weapon(s) and the clothes he is wearing.” Al-Ḥasan says, “Except for his animals (i.e. horse or camel) and *Muṣḥaf* (i.e. Qur'ān).” They hold this due to the following *Hadīth* of ibn ‘Umar رَضِيَ اللَّهُ عَنْهُمَا Abū Dāwūd رَحِمَهُ اللَّهُ recorded in His *Sunan: The Book of Jihād* (2713) from Sālim, who heard his father (Ibn ‘Umar) narrating from ‘Umar ibn al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ, from the Prophet ﷺ:

قَالَ أَبُو دَاوُدَ: «وَصَالِحٌ هَذَا أَبُو وَقْدٍ» - قَالَ: دَخَلْتُ مَعَ مَسْلَمَةَ أَرْضَ
الرُّومِ فَاتَيْتُ بِرَجُلٍ قَدْ غَلَّ فَسَأَلْتُ سَالِمًا عَنْهُ فَقَالَ: سَمِعْتُ أَبِي يُحَدِّثُ،
عَنْ عُمَرَ بْنِ الْخَطَّابِ، عَنِ النَّبِيِّ ﷺ قَالَ: «إِذَا وَجَدْتُمُ الرَّجُلَ قَدْ غَلَّ

⁵⁸⁴ Refer to *al-Hidāyah* (2/386&387)

فَأَحْرَقُوا مَتَاعَهُ وَاضْرَبُوهُ» قَالَ: فَوَجَدْنَا فِي مَتَاعِهِ مُصْحَفًا، فَسَأَلَ سَالِمًا عَنْهُ فَقَالَ: «بِعْهُ وَتَصَدَّقْ بِشَمْنِهِ»

“When you find a man who has committed *Ghulūl*, burn his property, and beat him.” He (i.e. Abū Wāqid) said, “We found in his property a copy of the Qur’ān.” He again asked Sālim about it. He said, “Sell it and give its price in charity.”⁵⁸⁵

Also in *Sunan Abī Dāwūd: The Book of Jihād* (2714) from Ṣāliḥ ibn Muḥammad (i.e. Abū Wāqid) رَحِمَهُ اللَّهُ, who said:

عَنْ صَالِحِ بْنِ مُحَمَّدٍ، قَالَ: غَزَوْنَا مَعَ الْوَلِيدِ بْنِ هِشَامٍ وَمَعَنَا سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، فَعَلَّ رَجُلٌ مَتَاعًا فَأَمَرَ الْوَلِيدُ بِمَتَاعِهِ فَأَحْرَقَ وَطِيفَ بِهِ وَلَمْ يُعْطِهِ سَهْمَهُ. قَالَ أَبُو دَاوُدَ: وَهَذَا أَصْحُ الْحَدِيثَيْنِ رَوَاهُ غَيْرُ وَاحِدٍ أَنَّ: الْوَلِيدَ بْنَ هِشَامٍ أَحْرَقَ رَحْلَ زِيَادِ بْنِ سَعْدٍ، وَكَانَ قَدْ غَلَّ وَضَرَبَهُ.

“We went out on an expedition with al-Walīd ibn Hishām, and Sālim ibn ‘Abdullāh ibn ‘Umar and ‘Umar ibn ‘Abd al-‘Azīz were (also) with us. A man had committed *Ghulūl*. Al-Walīd ordered that his property be burnt, and that was circulated (amongst the people), and he (i.e. the man) was not given his share (of the *Ghanīmah*).”

Abū Dāwūd رَحِمَهُ اللَّهُ said, “This is the sounder of the two narrations (i.e. 2713&2714). Others narrated al-Walīd ibn Hishām beat and burnt the camel saddle (i.e. belongings) of Ziyād ibn Sa’d who had committed *Ghulūl*.”⁵⁸⁶

However, the scholars of *Ḥadīth* considered these narrations to be *Da’if* due to them containing Ṣāliḥ ibn Muḥammad رَحِمَهُ اللَّهُ in

⁵⁸⁵ Al-Albānī graded this narration as *Da’if*

⁵⁸⁶ Al-Albānī graded this narration as *Da’if al-Maqtū’* (ضعيف المقطوع)

their chains who was considered by al-Bukhārī رَحِمَهُ اللَّهُ as rejected (*Munkar*).

In light of this, an-Nawawī رَحِمَهُ اللَّهُ expounded in his commentary on *Ṣaḥīḥ Muslim* (4/1935), “(The scholars have) differed as to the nature of the punishment for the one who commits *Ghulūl*. The majority of the scholars and leaders (of the *Ummah*) say that the thief’s belongings should not be burnt; rather he should be punished with a discretionary punishment that the *Imām* deems fitting. This was the position of Mālik, ash-Shāfi’ī, Abū Ḥanīfah, and countless from amongst the Companions and Successors.” Ibn an-Nuḥḥās رَحِمَهُ اللَّهُ however relates a far more damaging punishment, after mentioning the punishment for *Ghulūl* in the Hereafter: “And as for its punishment in this world; then *Ghulūl* does not become widespread in a people except that Allāh casts terror into their hearts and withholds (i.e. delays His) victory from them.”⁵⁸⁷ He then goes on to narrate ibn ‘Abbās رَضِيَ اللَّهُ عَنْهُ statement in Malik’s *Muwatta’a’: The Book of Jihād* (1323):

مَا ظَهَرَ الْغُلُولُ فِي قَوْمٍ قَطُّ إِلَّا أَلْقَى فِي قُلُوبِهِمُ الرُّعْبَ

“*Ghulūl* does not appear amongst a people except that Allāh casts terror into their hearts.”⁵⁸⁸

Also, at-Tabarānī رَحِمَهُ اللَّهُ narrates that Abū Dhar al-Ghifārī رَضِيَ اللَّهُ عَنْهُ narrated the Prophet ﷺ said:

⁵⁸⁷ *Mashāri’ al-Ashwāq* (p.817)

⁵⁸⁸ This statement of ibn ‘Abbās has been graded as *Da’if* (weak), however a similar narration is found in *Sunan ibn Mājah: The Book of Tribulations* (4019) which al-Albānī graded as *Hasan*, in which the Prophet ﷺ said:

وَلَمْ يَنْقُضُوا عَهْدَ اللَّهِ، وَعَهْدَ رَسُولِهِ، إِلَّا سَلَّطَ اللَّهُ عَلَيْهِمْ عَدُوًّا مِنْ غَيْرِهِمْ،
فَأَخَذُوا بَعْضَ مَا فِي أَيْدِيهِمْ

“They do not break Allāh’s covenant, and His Messenger’s covenant, except that will cause a foreign enemy to overpower them, taking some of what they have away from them.”

إِنْ لَمْ تَغُلَّ أُمَّتِي لَمْ يَقُمْ لَهُمْ عَدُوٌّ أَبَدًا

“If my Ummah does not commit Ghulūl, their enemy would never be able to stand against them.”⁵⁸⁹

In addition, ibn Kathīr narrated that *Imām Aḥmad* رَحِمَهُمُ اللَّهُ recorded that ‘Umar ibn al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ said:

لَمَّا كَانَ يَوْمُ خَيْبَرَ أَقْبَلَ نَفَرٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ ﷺ فَقَالُوا: فُلَانٌ شَهِيدٌ وَفُلَانٌ شَهِيدٌ، حَتَّى أَتَوْا عَلَى رَجُلٍ، فَقَالُوا: فُلَانٌ شَهِيدٌ، فَقَالَ رَسُولُ اللَّهِ ﷺ «كَأَنَّيْ رَأَيْتُهُ فِي النَّارِ فِي بُرْدَةٍ غَلَّهَا- أَوْ عَبَاءَةٍ-»

On the day (battle) of Khaybar, several Companions of the Messenger of Allāh ﷺ came to him and said, “So-and-so has died as a martyr; so-and-so has died as a martyr.” When they mentioned a certain man that died as a martyr, the Messenger of Allāh said, “No. I have seen him in the Fire because of a robe that he stole (from the Ghanīah).”⁵⁹⁰

These stern treats should be enough of deterrent for those concerned with the plight of the *Ummah*, and who claim to love Allāh and His Messenger ﷺ - and He ﷻ knows best.

⁵⁸⁹ *Al-Awsaṭ* (11/65), *Majma’ az-Zawā’id* (5/338) (9740), and its narrators are all *Thiqāt* (reliable)

⁵⁹⁰ *Musnad Aḥmad: Musnad ‘Umar ibn al-Khaṭṭāb* (203)

CHAPTER SUMMARY

Wealth the Muslims appropriate from the disbelievers falls into one of three categories:

- 1) ***Ghanīmah***, which is gained through combat and belongs exclusively, after the *Khumus* has been extracted, to those who participated in the operation in which it was acquired.
- 2) ***Salb***, which belongs exclusively to the one who acquired it by killing its disbelieving owner, if he can provide evidence of such.
- 3) ***Fay'***, which is gained through means other than fighting, and is spent by the *Imām* according to the general needs of the Muslims.

Scholars have a consensus that the *Ghanīmah* is split into five portions, with four being for the *Ghānimīn*. However, they differ as to how the *Khumus* should be divided.

Wealth appropriated from the disbelievers by way of force falls within two categories:

- 1) Slaves from amongst the disbelievers (i.e. those prisoners the *Imām* has chosen to enslave), or those already enslaved from amongst the disbelievers. This category is further sub-divided into:
 - i) **Men**, who are to be enslaved, executed, ransomed, or freed, according to that which yields most benefit for the *Ummah*.
 - ii) **Women and children (السبي)** whom, due to the overriding harms associated today with taking the disbelieving women as concubines, should not be taken

as such. However, they may be kept as regular prisoners if there is a benefit in doing so.

2) All other types of wealth which like the above, is further subdivided:

i) **Land and Real Estate.** The *Imām* should dispose of which in accordance with that which is most beneficial for the Muslims.

ii) **All other types of wealth** (excluding captives).

In addition to the regular share of the *Ghanīmah*, the leader has the discretion to award *Nafl* - and additional financial reward - to those whom he deems deserving. He likewise has the discretion to award *Ruḍukh* - a discretionary share - to those whom he deems deserving from those not ordinarily entitled to a share of the *Ghanīmah*, such as women and minors.

Ghulūl is treachery concerning the *Ghanīmah*, and to steal from it prior to its division, and in one of the seven major destructive sins. Its punishments in this world and the next are severe.

Food, drink, and other necessities are excluded from the above prohibition, as long as they are consumed whilst in the land of battle, and not stockpiled, or taken in excess.

CHAPTER 24

وَجُوبُ اتِّخَاذِ الْإِمَارَةِ

THE OBLIGATION OF APPOINTING A LEADER

Shaykh al-Islām ibn Taymiyyah رحمته الله says in *as-Siyāsah ash-Shar'īyyah* (pgs.447&448), “It must be acknowledged that the governance of the people’s affairs is from among the greatest obligations of the religion. Nay, the [affairs of the] Religion and the *Dunyā* cannot be established without it. For indeed, the welfare of the children of Ādam cannot be accomplished without life in a social group, due to their need of each other; and they cannot do without a leader while [living] in human society, to the extent that the Prophet ﷺ said:

إِذَا خَرَجَ ثَلَاثَةٌ فِي سَفَرٍ فَلْيُؤَمِّرُوا أَحَدَهُمْ

‘If three are on a journey, let them appoint one of them as (their) *Amīr*.’⁵⁹¹

⁵⁹¹ *Sunan Abī Dāwūd: The Book of Jihād* (2608). Al-Albānī ruled it *Ṣaḥīḥ* in his *Ṣaḥīḥ Abī Dāwūd* (2347)

Aḥmad also reported in *al-Musnad* (6647) from ‘Abdullāh ibn ‘Amr رَضِيَ اللَّهُ عَنْهُمَا that the Prophet ﷺ said:

لَا يُحِلُّ لثَلَاثَةٍ نَفَرٍ يَكُونُونَ بِأَرْضٍ فَلَاةٍ إِلَّا أَمَرُوا عَلَيْهِمْ أَحَدَهُمْ، وَلَا يُحِلُّ لثَلَاثَةٍ نَفَرٍ يَكُونُونَ بِأَرْضٍ فَلَاةٍ يَتَنَاجَى اثْنَانِ دُونَ صَاحِبُهُمَا

‘It is not permissible for a group of three that have come together (for a purpose) except that they appoint one of them as their Amīr, and it is (also) not permissible that two converse privately to the exclusion of the third.’”

Commenting on this narration, ash-Shawkānī رَحِمَهُ اللَّهُ says in *Nayl al-Awṭār* (8/249), “And in it is evidence that he ﷺ has legislated for every number greater than three that they appoint one of them as their leader, due to it saving them from the differences (of opinion) that lead to destruction. This is because in the absence of leadership everyone will have their own opinion and act according to his own desires, thus destruction will befall them. However, with the appointment of a leader their differences will be diminished and unity will be achieved. So if this is legislated for the group of three who are stationed in the land or travelling, then it is even more crucial for (those in) greater numbers living in a town or city, and those who are in need of warding off oppression.”

Ibn Taymiyyah رَحِمَهُ اللَّهُ says in *as-Siyāsah ash-Shar’iyyah* (p.23), “It is *Wājib* upon the leader (*Walī al-Amr*) to appoint the best person he finds for every position from amongst the Muslims’ positions.

The Prophet ﷺ said:

مَنْ وَلِيَ مِنْ أَمْرِ الْمُسْلِمِينَ شَيْئًا، فَوَلَّى رَجُلًا وَهُوَ يَجِدُ مَنْ هُوَ أَصْلَحُ لِلْمُسْلِمِينَ مِنْهُ فَقَدْ خَانَ اللَّهَ وَرَسُولَهُ

‘Whoever is appointed over any of the affairs of the Muslims, and he appoints a man although he finds one better for the Muslims; he has indeed been treacherous to Allāh, His Messenger, and the believers.’”⁵⁹²

Allāh ﷻ, in *Sūrah al-Qaṣaṣ* (28:26), outlines the most important qualities a leader should possess, stating:

﴿إِنَّ خَيْرَ مَنْ آسْتَجَرْتَ الْقَوِيُّ الْأَمِينُ﴾

“... Indeed, the best one you can hire is the strong and the trustworthy.”

Shaykh ‘Abd ar-Raḥmān as-Sa’dī رَحِمَهُ اللَّهُ says about the above verse in his *Tafsīr* (p.585), “And the best one to employ is the one that combines between these two qualities, meaning strength and the capability to perform the task he is hired for, and trustworthiness in this regard; meaning the absence of treachery [and presence of piety]. It is a must that these two characteristics be considered with regards to anyone that is charged to carry out a task for the people, whether he is being paid for the job or not.”

Nevertheless, ibn Taymiyyah رَحِمَهُ اللَّهُ says in *as-Siyāsah ash-Shar’iyyah* (pgs.47&48), “The people who combine capability and trustworthiness are few, and due to this ‘Umar ibn al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ used to say: ‘O Allāh, I complain to You about the capable evil person, and the incompetent pious one.’ Therefore, it is *Wājib* to appoint for every position the most suitable in relation to the office. Therefore, if there are two candidates - one of them more pious, while the other is stronger (i.e. more capable) - the most beneficial and least harmful of the two for the post is selected. Thus, the strong and brave man is given precedence for

⁵⁹² A similar narration is reported in *al-Mustradrak* (7023). *Al-Ḥākim* said regarding it, “This *Ḥadīth*’s *Isnād* is *Ṣaḥīḥ* although they did not record include it (in their books, i.e. al-Bukhārī and Muslim).” Nevertheless, al-Albānī considered it weak in his *Da’if al-Jāmi*’ (5401)

the office of war even if he commits evil deeds over the weak and incapable man, even if he is pious.

Correspondingly, *Imām* Aḥmad was asked about two men that are leaders in war; one of them is capable but evil, while the other is righteous but incapable - which one of them should be fought alongside? He replied, 'As for the capable but evil, then his strength is for the Muslims and his evil affects *only* himself. While the righteous but incapable, then his righteousness is for himself but his weakness will affect the Muslims.'⁵⁹³

Indeed, the Prophet ﷺ informed the believers:

إِنَّ اللَّهَ لَيُؤَيِّدُ هَذَا الدِّينَ بِالرَّجُلِ الْفَاجِرِ

"Indeed Allāh will support this religion (even) with an extremely evil man."

It is not allowed to appoint to positions of leadership the following types of people:

1) The disbeliever

Evidence for the prohibition of appointing the disbeliever, or allowing him to preside over the general affairs of the Muslims is present in numerous places throughout the Book of Allāh ﷻ an *Sunnah* of His Messenger ﷺ. From amongst these instances are His ﷻ noble words in *Sūrah Āl 'Imrān* (3:28):

⁵⁹³ As the words of *Imām* Aḥmad رحمه الله indicate, when the capable man's evil is restricted to himself, fighting alongside him is no doubt, an act legislated in the *Sharī'ah*. However, the equation requires further analysis if his evil is not restricted to himself, but rather extends to those around him, lest one becomes from amongst those who assist in spreading corruption throughout the land. Thus, it becomes clear that possessing a solid foundation and good understanding of the sciences of *as-Siyāsah ash-Shar'īyyah*, and the *Uṣūl* and *Qawā'id* of *Fiqh* are indispensable provisions for the concerned and serious *Jihādī* movement, group, and their individuals

﴿لَا يَتَّخِذِ الْمُؤْمِنُونَ الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ وَمَنْ يَفْعَلْ ذَلِكَ فَلَيْسَ مِنَ اللَّهِ فِي شَيْءٍ إِلَّا أَنْ تَتَّقُوا مِنْهُمْ تُقَاتُوا﴾
وَيَحْذَرُكُمُ اللَّهُ نَفْسَهُ ۖ وَإِلَى اللَّهِ الْمَصِيرُ ﴿٢٨﴾

Let not believers take disbelievers as allies [i.e., supporters or protectors] rather than believers. And whoever [of you] does that has nothing [i.e., no association] with Allāh, except when taking precaution against them in prudence. And Allāh warns you of Himself and to Allāh is the [final] destination.

Additionally, in *Ṣaḥīḥ al-Bukhārī: The Book of Tribulations* (7055&7056), and in *Ṣaḥīḥ Muslim: The Book of Governance* (1709), Janādah ibn Abū Umayyah رَضِيَ اللَّهُ عَنْهُ narrated:

دَخَلْنَا عَلَى عُبَادَةَ بْنِ الصَّامِتِ، وَهُوَ مَرِيضٌ، قُلْنَا: أَصْلَحَكَ اللَّهُ، حَدَّثَ بِحَدِيثٍ يَنْفَعُكَ اللَّهُ بِهِ، سَمِعْتُهُ مِنَ النَّبِيِّ ﷺ، قَالَ: دَعَانَا النَّبِيُّ ﷺ فَبَايَعَنَا، (7056) - فَقَالَ فِيمَا أَخَذَ عَلَيْنَا: أَنْ بَايَعَنَا عَلَى السَّمْعِ وَالطَّاعَةِ، فِي مَنْشَطِنَا وَمَكْرَهِنَا، وَعُسْرِنَا وَيُسْرِنَا وَأَثَرَةً عَلَيْنَا، وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ، إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا، عِنْدَكُمْ مِنَ اللَّهِ فِيهِ بُرْهَانٌ

“We entered upon ‘Ubādah ibn as-Ṣāmit while he was sick. We said, ‘May Allāh make you healthy! Will you tell us a *Ḥadīth* which you heard from the Prophet ﷺ, and Allāh may make you benefit (from it)?’ He said, ‘The Prophet ﷺ called us and we gave him the pledge of allegiance for Islām. Among the conditions upon which he took the pledge from us, was that we listen and obey both in the times we are active and the times we are tired, and at times of difficulty and ease. In addition, to be obedient to the ruler and to give him his rights even if he does not give us our rights, and not to rebel (fight) against him unless

we witness open disbelief from him, for which we will have a proof from Allāh.”

Imām an-Nawawī, in his commentary (4/1942) on the above narration quotes al-Qāḍī ‘Iyyāḍ رَحِمَهُمُ اللَّهُ as saying, “The scholars have consensus that the leadership is not to be given to a disbeliever, and that if (the ruler) becomes a disbeliever, then he is to be ousted...”

2) The child, woman, or the insane

Allāh ﷻ says in *Sūrah an-Nisā* (4:5):

﴿وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَمًا﴾

***And do not give the weak-minded your property,
which Allāh has made a means of sustenance for you,***

Ibn Kathīr رَحِمَهُمُ اللَّهُ comments about the verse in his *Tafsīr* (2/377&378) saying, “Allāh prohibited giving the unwise the freedom to do as they wish with wealth, which Allāh has made as a means of support for people. This ruling sometimes applies because of being young, as young people are incapable of making wise decisions. It also applies in cases of insanity, erratic behaviour and having a weak intellect or religious practice. [...] Aḍ-Ḍaḥḥāk reported that ibn ‘Abbās said that Allāh’s statement, ***And do not give the weak-minded your property***, refers to children and women. Similar was also said by ibn Mas’ūd, al-Ḥakam ibn ‘Uyaynah, al-Ḥasan and Aḍ-Ḍaḥḥāk: ‘Women and boys.’”

Therefore, if it is the case that the child and insane are prohibited from having control over their own wealth until they mature and/or are able to manage it in an appropriate manner, then how could then they be allowed to manage the affairs of the *Jihād* and *Mujāhidīn*?

Regarding the specific prohibition of appointing woman as leaders (in public office), in *Ṣaḥīḥ al-Bukhārī: The Book of Fitan* (7099), the Prophet ﷺ said:

لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ

“A people will never succeed that entrust their affairs (i.e. leadership) to a woman.”⁵⁹⁴

That being said, women may occupy lesser positions within the *Ummah* and the *Jihādī* movement.

3) The one who requests, or covets the position

Evidence for this is in the narration recorded by Muslim in his *Ṣaḥīḥ: The Book of Governance* (1733), in which the Prophet ﷺ said:

لَنْ، أَوْ لَا نَسْتَعْمِلُ عَلَى عَمَلِنَا مَنْ أَرَادَهُ

“We shall not, or never, appoint over public affairs those who desire them (i.e. the positions).”⁵⁹⁵

A similar narration is recorded in *Ṣaḥīḥ al-Bukhārī: The Book of Judgements* (7149) wherein the Prophet ﷺ said:

إِنَّا لَا نُؤَلِّي هَذَا مَنْ سَأَلَهُ، وَلَا مَنْ حَرَصَ عَلَيْهِ

⁵⁹⁴ Similar narrations are also present in *Sunan an-Nasā'ī: The Book of the Etiquette of Judges* (5388) and *Jāmi' at-Tirmidhī: Chapters on al-Fitan* (2262)

⁵⁹⁵ Similar narrations are also found in *Ṣaḥīḥ al-Bukhārī: The Book of Apostates* (6923), *Sunan Abī Dāwūd: The Book of Prescribed Punishments* (4354, 4355), and *Sunan an-Nasā'ī: The Book of Fighting [The Prohibition of Bloodshed]* (4066)

“We do not assign this [responsibility] to anyone who requests it, nor to those who covet it.”⁵⁹⁶

4) The treacherous

Allāh ﷻ says concerning treachery in *Sūrah al-Anfāl* (8:27):

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَنَتِكُمْ وَأَنْتُمْ تَعْلَمُونَ ﴿٢٧﴾﴾

O you who have believed, do not betray Allāh and the Messenger or betray your trusts while you know [the consequence].

He ﷻ also says in the same *Sūrah* (8:58):

﴿إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ ﴿٥٨﴾﴾

Indeed, Allāh does not like traitors.

As such, since the institution of *Jihād* is focused on raising the word of Allāh to the uppermost and protecting the religion and believers from harm, how could the *Sharī'ah* permit one who is known for treachery to assume the responsibility of leading the *Ummah* in her *Jihād*?

According to al-Qurṭubī رَحِمَهُ اللَّهُ, who mentions in his *Tafsīr* (4/393) on the above verse, that the majority of scholars hold it impermissible to wage *Jihād* along with the *Imām* who is treacherous in relation to covenants and treaties. As such, it is

⁵⁹⁶ These narrations also serve as clear evidence indicating the prohibition of the democratic process, wherein candidates campaign striving to persuade the general public to elect them to public office in order that they legislate and judge by other than what Allāh revealed

even more imperative for individuals known for this evil trait not to be appointed to lead the *Jihād* in the first place.

For those in doubt about the impermissibility and harm associated with allowing the treacherous free reign over the affairs of the *Jihād* and *Mujāhidīn*. Let them look to those arenas of *Jihād* wherein the fruits have been stolen by the disbelievers due to the treachery of the leaders and their evil ‘scholars’, and supporters. Similarly are the instances wherein the *Mujāhidīn*, their families, and the wealth of the *Ummah* have been thrown into destruction with little, in any, apparent benefit from such treacherous decisions. The examples of this are indeed fresh in minds of those following events, and whose wounds are still fresh and causing pain - and we seek Allāh’s Help.

5) Other than the best man for the job

Ibn Taymiyyah رَحِمَهُ اللهُ says in *as-Siyāsah ash-Shar’iyyah* (p.23), “It is *Wājib* upon the leader (*Walī al-Amr*) to appoint the best person he finds for every position from amongst the Muslims’ positions.

The Prophet ﷺ said:

مَنْ وَلِيَ مِنْ أَمْرِ الْمُسْلِمِينَ شَيْئًا، فَوَلَّى رَجُلًا وَهُوَ يَجِدُ مَنْ هُوَ أَصْلَحُ
لِلْمُسْلِمِينَ مِنْهُ فَقَدْ خَانَ اللَّهَ وَرَسُولَهُ

‘Whoever is appointed over any of the affairs of the Muslims, and he appoints a man although he finds one better for the Muslims; he has indeed been treacherous to Allāh, His Messenger, and the believers.’”

In the absence of a general *Imām* or *Khalīfah* to appoint such a leader, then the obligation to appoint the best man for the job falls upon those present, to exert their efforts in selecting the

best person present for the position, like the Companions رضي الله عنهم did after the death of the Messenger of Allāh ﷺ in appointing Abū Bakr *aṣ-Ṣiddīq* رضي الله عنه as their leader.

6) Ex-Apostates

As documented by the early Islamic historians and biographers, the Prophet ﷺ, Abū Bakr *aṣ-Ṣiddīq*, ‘Umar ibn al-Khaṭṭāb, and ‘Alī ibn Abī Ṭālib رضي الله عنه forbade any former apostate from holding any position of office within the Islamic state; military or otherwise.⁵⁹⁷ ‘Uthmān ibn ‘Affān رضي الله عنه did however appoint ibn Abī Sarḥ, a former apostate, to be governor over Miṣr (Egypt). Although, as Shaykh aṭ-Ṭarīfī explained in his *Tafsīr* (3/1546) on *Sūrah at-Tawbah* (9:83), this was only after a period of more than fifteen years in which he had proved himself to be a reformed character and good Muslim, and after testing him in lesser positions.

Leading on from this, is the obligation for the believers, and *Mujāhidīn* especially, to unite under one leader. As such, Allāh ﷻ commands the believers in *Sūrah Āl ‘Imrān* (3:103):

﴿وَأَعْتَصِمُوا بِحَبْلِ اللَّهِ جَمِيعًا وَلَا تَفَرَّقُوا﴾

***And hold firmly to the rope of Allāh (i.e. the Qur’ān)
all together and do not become divided.***

⁵⁹⁷ It must be noted though, that ‘Umar رضي الله عنه did eventually allow them, after their repentance and good conduct had become evident, to join the ranks of the *Mujāhidīn*, and he commanded his military commanders to benefit from those amongst them that had expertise in the field of war. However, he forbade they be appointed to any position of command. Two notable examples of these were the heroes and warriors, ‘Amr ibn Ma’di Karib and Ṭulayḥah al-Asadī رضي الله عنه. Refer to ‘Umar ibn al-Khaṭṭāb: *His Life and Times* (2/157&158) for an account of this

He ﷺ also says (3:105):

﴿وَلَا تَكُونُوا كَالَّذِينَ تَفَرَّقُوا وَاخْتَلَفُوا مِنْ بَعْدِ مَا جَاءَهُمُ الْبَيِّنَاتُ وَأُولَٰئِكَ لَهُمْ عَذَابٌ عَظِيمٌ﴾^(١٠٥)

And do not be like the ones who became divided and differed after the clear proofs had come to them. And those will have a great punishment

The Messenger of Allāh ﷺ also command unity and censured disunity in the narration collected by Muslim رَحِمَهُ اللَّهُ in his *Ṣaḥīḥ: The Book of Judgements* (1715) saying:

إِنَّ اللَّهَ يَرْضَىٰ لَكُمْ ثَلَاثًا، وَيَكْرَهُ لَكُمْ ثَلَاثًا، فَيَرْضَىٰ لَكُمْ: أَنْ تَعْبُدُوهُ، وَلَا تُشْرِكُوا بِهِ شَيْئًا، وَأَنْ تَعْتَصِمُوا بِحَبْلِ اللَّهِ جَمِيعًا وَلَا تَفَرَّقُوا...

*“Indeed, Allāh is pleased with three things for you: That you worship Him and do not associate anything with Him and that you hold on to the rope of Allāh together and be not divided [amongst yourselves]...”*⁵⁹⁸

⁵⁹⁸ Allāh informs the believers of the outcome of disunity stating (8:46):

﴿وَلَا تَنَزَعُوا فَنَفْسًا لَكُمْ وَتَذْهَبَ رِيحُكُمْ﴾

and do not dispute and [thus] lose courage and [then] your strength would depart

In addition to this, experience has shown that in the majority of instances wherein multiple fighting groups exist in the same region, they eventually fight each other due to their differences; a reality often exploited by the disbelievers and *Munāfiqīn* - and to Allāh do we belong and to him do we return. Refer to *Al-Jihād In The Light of As-Siyāsatush-Shar'iyah* (pp.48-64) for more details concerning the topic of this chapter

CHAPTER SUMMARY

It is *Wājib* upon the *Ummah* in general, and those present specifically, to appoint an *Amīr* for the purposes of *Jihād*, and for administering the lands and affairs of the Muslims. It is also *Wājib* to appoint the best and most suitable person for each position in which an *Amīr* is required. Failure to do so, falls squarely within the realms of treachery to Allāh ﷻ, His Messenger ﷺ, and the believers.

Ideally, the *Amīr* should possess two qualities - strength (i.e. competence) and trustworthiness (i.e. *Taqwā*). However, in the absence of such individuals, then each office is considered accordingly. As such, “If there are two men selected and one of them is more pious while the other is stronger, the most beneficial and least harmful of the two for the post is selected.” And as far as *Jihād* is concerned, the capable but evil takes precedence over the pious but incapable, unless a better alternative exists.

It is not allowed to appoint to positions of leadership the following types of people:

- 1) The disbeliever
- 2) The child, woman, or the insane
- 3) The one who requests, or covets the position
- 4) The treacherous
- 5) Other than the best man for the job, and
- 6) The ex-Apostate

CHAPTER 25

الصلاة الخوف

THE FEAR PRAYER

The Fear Prayer is defined as, “The obligatory prayer performed during its time, while the Muslims are engaged in combat with the enemy, or are standing guard against them.”⁵⁹⁹

It is performed when the believer is in a state of fear usually, although not exclusively, due to enemy presence in the vicinity. It is one of the manners by which Allāh ﷻ, in His infinite Mercy and Wisdom, safeguards the prayer whilst protecting the believers from unnecessary hardship or harm.

Al-Hāfidh ibn Kathīr رحمه الله explains, “The Fear Prayer has different forms, for the enemy is sometimes in the direction of the *Qiblah* and sometimes in another direction. The Fear Prayer consists sometimes of four *Rak’āt*, three *Rak’āt* for *Maghrib*, and sometimes two *Rak’āt* like *Fajr* and prayer during travel. The Fear Prayer is sometimes prayed in congregation, but when the battle is raging, congregational prayer may not be possible. In this case, they pray each by himself, facing the *Qiblah* or

⁵⁹⁹ *Kifāyah at-Ṭālib ar-Rabbānī* (1/134) in *Mawsū’ah al-Ijmā’* (6/136)

otherwise, riding or on foot. In this situation, they are allowed to walk and fight, all the while performing the acts of the prayer.”⁶⁰⁰ As was the case with ‘Abdullāh ibn Unays al-Juhanī رَضِيَ اللَّهُ عَنْهُ when he feared the ensuing altercation would cause him to miss the ‘Aṣr prayer after the Prophet ﷺ dispatched him to assassinate Khālīd ibn Sufyān al-Hudhhalī. He recalled رَضِيَ اللَّهُ عَنْهُ, in a narration collected by both Abū Dāwūd and Aḥmad رَضِيَ اللَّهُ عَنْهُ:

فَخَشِيتُ أَنْ تَفُوتَنِي فَجَعَلْتُ أَصَلِّي وَأَنَا أُمِيئُ إِيْمَاءً. الْحَدِيثُ بِطَوْلِهِ
رَوَاهُ أَحْمَدُ وَأَبُو دَاوُدَ يَسْنَادٍ جَيِّدٍ

“I was afraid that I would miss (the prayer), so I prayed (whilst walking) by nodding.”⁶⁰¹

Regarding the reason behind the legislation of the Fear Prayer, Abū Dāwūd رَضِيَ اللَّهُ عَنْهُ narrated in his *Sunan: The Book of the Prayer* (1236) from Abī ‘Ayyāsh az-Zuraqī رَضِيَ اللَّهُ عَنْهُ:

حَدَّثَنَا سَعِيدُ بْنُ مَنْصُورٍ، حَدَّثَنَا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ، عَنْ مَنْصُورٍ، عَنْ مُجَاهِدٍ، عَنْ أَبِي عِيَّاشٍ الزُّرَقِيِّ، قَالَ: كُنَّا مَعَ رَسُولِ اللَّهِ ﷺ بَعْثَفَانَ، وَعَلَى الْمُشْرِكِينَ خَالِدُ بْنُ الْوَلِيدِ، فَصَلَّيْنَا الظُّهْرَ، فَقَالَ الْمُشْرِكُونَ: لَقَدْ أَصَبْنَا غُرَّةً، لَقَدْ أَصَبْنَا غَفْلَةً، لَوْ كُنَّا حَمَلْنَا عَلَيْهِمْ وَهُمْ فِي الصَّلَاةِ فَتَزَلَّتْ آيَةُ الْقَصْرِ بَيْنَ الظُّهْرِ وَالْعَصْرِ، فَلَمَّا حَضَرَتِ الْعَصْرُ، قَامَ رَسُولُ اللَّهِ ﷺ مُسْتَقْبِلَ الْقِبْلَةِ، وَالْمُشْرِكُونَ أَمَامَهُ، فَصَفَّ خَلْفَ رَسُولِ اللَّهِ ﷺ، صَفٌّ، وَصَفَّ بَعْدَ ذَلِكَ الصَّفِّ صَفٌّ آخَرُ، فَرَكَعَ رَسُولُ اللَّهِ ﷺ، وَرَكَعُوا جَمِيعًا، ثُمَّ سَجَدَ، وَسَجَدَ الصَّفُّ الَّذِينَ يُلُونَهُ، وَقَامَ الْآخَرُونَ يَحْرُسُونَهُمْ، فَلَمَّا صَلَّى هَؤُلَاءِ السَّجْدَتَيْنِ وَقَامُوا،

⁶⁰⁰ *Tafsīr ibn Kathīr* (2/567)

⁶⁰¹ The full narration is recorded in *Sunan Abī Dāwūd: The Book of the Prayer* (1249), and *Musnad Aḥmad* (3/496) with a good (*Jayyid*) *Isnād*, however al-Albānī classified the *Ḥadīth* as *Ḍa‘īf*

سَجَدَ الْآخَرُونَ الَّذِينَ كَانُوا خَلْفَهُمْ، ثُمَّ تَأَخَّرَ الصَّفُّ الَّذِي يَلِيهِ إِلَى مَقَامِ الْآخَرِينَ، وَتَقَدَّمَ الصَّفُّ الْأَخِيرُ إِلَى مَقَامِ الصَّفِّ الْأَوَّلِ، ثُمَّ رَكَعَ رَسُولُ اللَّهِ ﷺ وَرَكَعُوا جَمِيعًا، ثُمَّ سَجَدَ وَسَجَدَ الصَّفُّ الَّذِي يَلِيهِ وَقَامَ الْآخَرُونَ يَحْرُسُونَهُمْ، فَلَمَّا جَلَسَ رَسُولُ اللَّهِ ﷺ وَالصَّفُّ الَّذِي يَلِيهِ، سَجَدَ الْآخَرُونَ، ثُمَّ جَلَسُوا جَمِيعًا فَسَلَّمَ عَلَيْهِمْ جَمِيعًا، فَصَلَّاهَا بِعُسْفَانَ، وَصَلَّاهَا يَوْمَ بَنِي سُلَيْمٍ

“We accompanied the Messenger of Allāh ﷺ at ‘Usfān,⁶⁰² and Khālīd ibn al-Walīd was the chief of the disbelievers. We offered the noon prayer. Thereupon the disbelievers said, ‘We suffered from negligence - we became careless. We should have attacked them while they were praying.’ Subsequently the verse was revealed relating to the shortening of the prayer (in time of danger) between the noon and afternoon (prayer). When the time of the ‘Aṣr prayer came, the Messenger of Allāh ﷺ stood facing the *Qiblah*, with the disbelievers standing in front of him. The people stood in a row behind the Messenger of Allāh ﷺ and there was another row behind this row. The Messenger of Allāh ﷺ bowed and all of them bowed. He then prostrated, and the row near him prostrated. The other people in the second row remained standing and stood guard over them. When they performed two prostrations and stood up, those who were behind them prostrated. The people in the front row near him then stepped backward taking the place of the people in the second row and the second row took the place of the first row.

The Messenger of Allāh ﷺ then bowed and all of them bowed together. Then he and the row near him prostrated. The people in the second row remained standing and stood guard over them. When the Messenger of Allāh ﷺ and the row near him (i.e. the front row) were seated, the people in the second row

⁶⁰² ‘Usfān is a town located approximately 36 miles from Makkah, on the border of Tahāmah (‘Awn al-Ma’būd)

behind them prostrated. When all of them were seated he (the Prophet ﷺ) uttered the salutation along with all of them. He prayed in his manner at 'Usfān as well as at the territory of Banū Sulaym.⁶⁰³

As such, *aṣ-Ṣalāh al-Khawf* (the Fear Prayer) is performed when the believer is in a state of war or in a situation wherein he feels, to perform the regular prayer, would endanger his life. Thus, Allāh ﷻ in His infinite Mercy and Compassion for the believers has legislated a number of concessions for the believers in such situations. He says in *Sūrah an-Nisā'* (4:102) regarding the lesser of His concessions:

﴿وَإِذَا كُنْتَ فِيهِمْ فَأَقَمْتَ لَهُمُ الصَّلَاةَ فَلْتَقُمْ طَائِفَةٌ مِنْهُمْ مَعَكَ وَلْيَأْخُذُوا أَسْلِحَتَهُمْ فَإِذَا سَجَدُوا فَلْيَكُونُوا مِنْ وَرَائِكُمْ وَلْتَأْتِ طَائِفَةٌ أُخْرَى لَمْ يُصَلُّوا فَلْيُصَلُّوا مَعَكَ وَلْيَأْخُذُوا حِذْرَهُمْ وَأَسْلِحَتَهُمْ وَدَ الَّذِينَ كَفَرُوا لَوْ تَغْفُلُونَ عَنْ أَسْلِحَتِكُمْ وَأَمْتِعَتِكُمْ فَيَمِيلُونَ عَلَيْكُمْ مَيْلَةً وَاحِدَةً وَلَا جُنَاحَ عَلَيْكُمْ إِنْ كَانَ بِكُمْ أَذَى مِنْ مَطَرٍ أَوْ كُنْتُمْ مَرَضَى أَنْ تَضَعُوا أَسْلِحَتَكُمْ وَخُذُوا حِذْرَكُمْ إِنَّ اللَّهَ أَعَدَّ لِلْكَافِرِينَ عَذَابًا مُهِينًا﴾ (١٠٢)

And when you [i.e., the commander of an army] are among them and lead them in prayer, let a group of them stand [in prayer] with you and let them carry their arms. And when they have prostrated, let them be [in position] behind you and have the other group come forward which has not [yet] prayed and let them pray with you, taking precaution and carrying their

⁶⁰³ Also narrated in *Sunan an-Nasā'ī: The Book of The Fear Prayer* (1549) and al-Bayhaqī's *Sunan al-Kubrā: Kitāb aṣ-Ṣalāh al-Khawf* (6024)

arms. Those who disbelieve wish that you would neglect your weapons and your baggage so they could come down upon you in one [single] attack. But there is no blame upon you, if you are troubled by rain or are ill, for putting down your arms, but take precaution. Indeed, Allāh has prepared for the disbelievers a humiliating punishment.

Aṭ-Ṭarīfī says in his *Tafsīr* (1/499&500) on the verse (2:239), “Do not abandon (i.e. delay) the prayer from its prescribed time under any circumstances. Therefore, whoever is not able to perform it in congregation or alone with tranquillity, should perform it whilst walking or riding a mount, vehicle, aeroplane, or ship.”

Al-Qurṭubī رحمه الله comments in his *Tafsīr* (2/191), “Allāh ﷻ has ordered (the believer) to safeguard the prayer in every situation - (in times of) health or sickness, residency or travelling, ability or inability, and in times of fear or security. Thus, the obligation (of the prayer) never is lifted from the *Mukallaḥ* in any situation... Even if it cannot be performed except with the gesturing of the eyes its performance must be undertaken, and with this it is distinguished from every other act of worship. The obligation for all of them is lifted due to legitimate excuse(s), and are lightened with concessions. For this reason, comments ibn al-‘Arabī, ‘Our scholars say that the matter is indeed a great one (to the extent that) if one abandons the prayer he is executed, as the prayer is a manifestation of *Īmān*, the obligation of which is not lifted in any situation.’”

Allāh ﷻ further concedes the issue if the believers are unable to perform the Fear Prayer in congregation. He mentions in *Sūrah al-Baqarah* (2:239):

﴿فَإِنْ خِفْتُمْ فِرْجَالًا أَوْ رُكْبَانًا فَإِذَا أَمِنْتُمْ فَأَذْكُرُوا اللَّهَ كَمَا
عَلَّمَكُمْ مَا لَمْ تَكُونُوا تَعْلَمُونَ﴾ (٢٢٩)

And if you fear [an enemy, then pray] on foot or riding. But when you are secure, then remember Allāh [in prayer], as He has taught you that which you did not [previously] know.

Ibn Kathīr رَحِمَهُ اللَّهُ comments in his *Tafsīr* (1/672&673):

“After Allāh commanded His servants to perform the prayer perfectly and emphasized this commandment; He mentioned the situations wherein the person might not be able to perform the prayer perfectly, during battle and combat. Allāh said, ***And if you fear [an enemy, then pray] on foot or riding.*** Meaning, pray in appropriate manner under these circumstances, whether on foot or riding, and whether facing the *Qiblah* or otherwise. *Imām* Mālik reported that Nāfi’ narrated that ibn ‘Umar used to describe the fear prayer when he was asked about it, and then would add:

فَإِنْ كَانَ خَوْفٌ أَشَدُّ مِنْ ذَلِكَ صَلَّوْا رِجَالًا عَلَى أَقْدَامِهِمْ، أَوْ
رُكْبَانًا مُسْتَقْبِلِي الْقِبْلَةِ أَوْ غَيْرَ مُسْتَقْبِلِيهَا. قَالَ نَافِعٌ: لَا أَرَى ابْنَ
عُمَرَ ذَكَرَ ذَلِكَ إِلَّا عَنِ النَّبِيِّ ﷺ

‘If there is extreme fear, pray on foot, riding, facing the *Qiblah* or otherwise.’ Nāfi’ commented, ‘I do not think ibn ‘Umar (would have) narrated that except from the Prophet ﷺ.’ Al-Bukhārī and Muslim reported the *Hadīth*.⁶⁰⁴

⁶⁰⁴ *Ṣaḥīḥ al-Bukhārī: Chapters on the Fear Prayer* (943), *The Book of Tafsīr* (4535), and *Ṣaḥīḥ Muslim: The Book of the Friday Prayer* (849)

Muslim, Abū Dāwūd, an-Nasā'ī, ibn Mājah, and ibn Jarīr reported that ibn 'Abbās رضي الله عنه said:

فَرَضَ اللَّهُ الصَّلَاةَ عَلَى لِسَانِ نَبِيِّكُمْ ﷺ فِي الْحَضَرِ أَرْبَعًا،
وَفِي السَّفَرِ رَكْعَتَيْنِ وَفِي الْخَوْفِ رَكْعَةً

‘Allāh has ordained the prayer upon the tongue of your Prophet ﷺ: four *Rak'ah* while residing, two *Rak'ah* while travelling, and one *Rak'ah* during times of fear.’⁶⁰⁵

This is also the view of al-Ḥasan al-Baṣrī, Qatādah, aḍ-Ḍaḥḥāk, and others.

In addition, al-Bukhārī entitled his Chapter, ‘*Prayer While Confronting the Forts and Facing the Enemy*’. Al-Awzā'ī said, ‘If victory seems near and the Muslims are unable to perform the prayer in the normal manner, they should pray by nodding, each to himself. If they are unable to nod, they should delay the prayer until fighting is finished. When they feel safe, they should pray two *Rak'ah*. If they are unable, they should then pray one *Rak'ah* that includes two prostrations. If they are unable, then *Takbīr*⁶⁰⁶ alone does not suffice, so they should delay the prayer until they are safe,’ and this is the same as the view Makḥūl held. Anas ibn Mālik said:

حَضَرْتُ مُنَاهِضَةَ حِصْنٍ تَسْتَرُ عِنْدَ إِضَاءَةِ الْفَجْرِ، وَاشْتَدَّ اشْتِعَالُ
الْقِتَالِ فَلَمْ يَقْدِرُوا عَلَى الصَّلَاةِ فَلَمْ نُصَلِّ إِلَّا بَعْدَ ارْتِفَاعِ النَّهَارِ

⁶⁰⁵ *Ṣaḥīḥ Muslim: The Book of Mosques and the Places of Prayer* (687), *Sunan Abī Dāwūd: The Book of Prayer* (1247), *Sunan an-Nasā'ī: The Book of Prayer* (456), *Sunan ibn Mājah: The Book of the establishment of the Prayer and the Sunnah regarding it* (1068), and *Tafsīr aṭ-Ṭabarī* (4/115&120)

⁶⁰⁶ i.e. proclaiming ‘*Allāhu Akbar*’

فَصَلَّيْنَاهَا وَنَحْنُ مَعَ أَبِي مُوسَى فَفُتِحَ لَنَا. قَالَ أَنَسٌ: وَمَا يَسُرُّنِي
بِتِلْكَ الصَّلَاةِ الدُّنْيَا وَمَا فِيهَا

‘I participated in the attack on the fort of Tustar.⁶⁰⁷ When the light of dawn started to become clear, suddenly the fighting raged and the Muslims were unable to pray until the light of day spread. We then prayed (the *Fajr* prayer) with Abū Mūsā and were then victorious. I would have not been pleased to gain the whole world and whatever is in it instead of that prayer.’ This is the wording of al-Bukhārī.⁶⁰⁸

[End of ibn Kathīr quote]

And in this manner prayed the Companion ‘Abdullāh ibn ‘Unays رَضِيَ اللَّهُ عَنْهُ when he was approaching Khālīd ibn Sufyān during his mission to assassinate the latter. Ibn Kathīr رَضِيَ اللَّهُ عَنْهُ narrates in *al-Bidāyah wa’n-Nihāyah* (3/305):

Imām Aḥmad stated that Ya’qūb related to him that his father quoted Ibn Ishāq as saying, “Muḥammad ibn Ja’far ibn az-Zuhayr related to me, from ibn ‘Abdullāh ibn Unays, from his father, who said:

دَعَانِي رَسُولُ اللَّهِ ﷺ فَقَالَ: إِنَّهُ قَدْ بَلَغَنِي أَنَّ خَالِدَ بْنَ سَفْيَانَ
بْنِ نُبَيْحٍ الْهُذَلِيِّ يَجْمَعُ لِي النَّاسَ لِيُغْزَوْنِي وَهُوَ بَعْرَنَةٌ فَائْتَهُ فَاقْتُلْهُ.
قَالَ قُلْتُ يَا رَسُولَ اللَّهِ انْعَمْتُ لِي حَتَّى أَعْرِفَهُ. قَالَ إِذَا رَأَيْتَهُ
وَجَدْتَ لَهُ قُشْعِرِيرَةً قَالَ فَخَرَجْتُ مُتَوَشِّحًا سَيْفِي حَتَّى وَقَعْتُ
عَلَيْهِ وَهُوَ بَعْرَنَةٌ مَعَ عَنِي يَزْتَادُ لَهُنَّ مَنْزِلًا وَحِينَ كَانَ وَقْتُ الْعَصْرِ

⁶⁰⁷ It was a walled-city located in the Persian province of Ahwāz, located on the East bank of the river Karun, present day Iraq

⁶⁰⁸ *Ṣaḥīḥ al-Bukhārī: The Book of the Fear Prayer: Chapter; The Prayer when Encountering the Enemy Fortress*

فَلَمَّا رَأَيْتُهُ وَجَدْتُ مَا وَصَفَ لِي رَسُولُ اللَّهِ ﷺ مِنَ الْقُشْعَرِيَّةِ فَأَقْبَلْتُ نَحْوَهُ وَخَشِيتُ أَنْ يَكُونَ بَيْنِي وَبَيْنَهُ مُجَاوِلَةٌ تَشْغَلُنِي عَنِ الصَّلَاةِ فَصَلَّيْتُ وَأَنَا أَمْشِي نَحْوَهُ أَوْمِي بِرَأْسِي لِلرُّكُوعِ وَالسُّجُودِ فَلَمَّا انْتَهَيْتُ إِلَيْهِ قَالَ: مَنْ الرَّجُلُ؟ قُلْتُ رَجُلٌ مِنَ الْعَرَبِ سَمِعَ بِكَ وَبَجَمْعِكَ لِهَذَا الرَّجُلِ فَجَاءَكَ لِدَلِّكَ. قَالَ أَجَلُ إِنَّا فِي ذَلِكَ قَالَ فَمَشَيْتُ مَعَهُ شَيْئًا حَتَّى إِذَا أُمَكَّنَنِي حَمَلْتُ عَلَيْهِ السَّيْفَ حَتَّى قَتَلْتُهُ ثُمَّ خَرَجْتُ وَتَرَكْتُ ظَعَانِيَهُ مُكَبَّاتٍ عَلَيْهِ.

فَلَمَّا قَدِمْتُ عَلَى رَسُولِ اللَّهِ ﷺ فَرَأَنِي قَالَ أَفْلَحَ الْوَجْهُ قَالَ قُلْتُ قَتَلْتُهُ يَا رَسُولَ اللَّهِ قَالَ صَدَقْتَ قَالَ ثُمَّ قَامَ مَعِيَ رَسُولُ اللَّهِ ﷺ فَدَخَلَ فِي بَيْتِهِ فَأَعْطَانِي عَصًا فَقَالَ: أُمْسِكْ هَذِهِ عِنْدَكَ يَا عَبْدَ اللَّهِ بْنَ أُنَيْسٍ. قَالَ فَخَرَجْتُ بِهَا عَلَى النَّاسِ فَقَالُوا مَا هَذِهِ الْعَصَا؟ قَالَ قُلْتُ أَعْطَانِيهَا رَسُولُ اللَّهِ ﷺ وَأَمَرَنِي أَنْ أُمْسِكَهَا قَالُوا أَوْلَا تَرْجِعُ إِلَى رَسُولِ اللَّهِ ﷺ فَتَسْأَلُهُ عَنْ ذَلِكَ. قَالَ فَرَجَعْتُ إِلَى رَسُولِ اللَّهِ ﷺ فَقُلْتُ يَا رَسُولَ اللَّهِ لِمَ أَعْطَيْتَنِي هَذِهِ الْعَصَا؟ قَالَ آيَةُ بَيْنِي وَبَيْنَكَ يَوْمَ الْقِيَامَةِ إِنْ أَقْلَ النَّاسُ الْمُنْحَصَرُونَ يَوْمَئِذٍ. قَالَ فَفَرَنَهَا عَبْدُ اللَّهِ بِسَيْفِهِ فَلَمْ تَزَلْ مَعَهُ حَتَّى إِذَا مَاتَ أُمِرَ بِهَا فَضُمَّتْ فِي كَفْنِهِ ثُمَّ دُفِنَا جَمِيعًا

‘The Messenger of Allāh ﷺ called for me and said, *I have been informed that Khālīd ibn Sufyān ibn Nubayḥ al-Hudhalī is gathering a force to attack me. He is at ‘Urānah. Go to him and kill him.* I replied, O Messenger of Allāh, please describe him to me so I can recognize him. When you see him, he replied, *you will tremble.* So I left bearing my sword. I came upon him at ‘Urāna where he had with him litter-borne women for whom he had sought a campsite. When it was time for the ‘Aṣr prayer -

and I had experienced that shivering that the Messenger of Allāh ﷺ had described - I went towards him. As I did, I was worried that some conflict might develop between us that would preoccupy me from performing the prayer. So I prayed as I walked towards him, nodding my head for the prayer bows and prostrations. When I reached him, he said, 'And who might you be?' I replied, I am a bedouin Arab who has heard of you and of your gathering a force against that fellow, and I have therefore come to you. He replied, 'Yes, I am engaged in that.' I then accompanied him a while until, when I could, I attacked him with my sword and killed him. I then departed; leaving his women all crouched over him.

When I reached the Messenger of Allāh ﷺ and he saw me he exclaimed, *Successful is his face!* I told him, I have killed him O Messenger of Allāh. *You have spoken the truth* he said. He then arose with me, entered his house and presented me with a stick saying, *Keep this with you* 'Abdullāh ibn Unays...'”⁶⁰⁹

In *Ṣaḥīḥ al Bukhārī: The Chapters of the Fear Prayer; 'Prayer While Confronting the Forts and Facing the Enemy'* (945), Jābir ibn 'Abdullāh رَضِيَ اللَّهُ عَنْهُ narrated:

جَاءَ عُمَرُ يَوْمَ الْخَنْدَقِ، فَجَعَلَ يَسُبُّ كُفَّارَ قُرَيْشٍ، وَيَقُولُ: يَا رَسُولَ اللَّهِ، مَا صَلَّيْتُ الْعَصْرَ حَتَّى كَادَتِ الشَّمْسُ أَنْ تَغِيبَ، فَقَالَ النَّبِيُّ ﷺ: «وَأَنَا وَاللَّهِ مَا صَلَّيْتُهَا بَعْدُ» قَالَ: فَنَزَلَ إِلَى بُطْحَانَ، فَتَوَضَّأَ وَصَلَّى الْعَصْرَ بَعْدَ مَا غَابَتِ الشَّمْسُ، ثُمَّ صَلَّى الْمَغْرِبَ بَعْدَهَا

⁶⁰⁹ Al-Albānī said in his commentary on *Fiqh as-Sīrah* (p.285), "It was narrated by Abū Dāwūd, al-Bayhaqī, and Aḥmad via ibn 'Abdullah ibn Unays who heard from his father, and the author said in his *Tafsīr* (1/295), 'It's *Isnād* is *Jayyid* (good).' Al-Ḥāfidh ibn Ḥajar said in *al-Fath (al-Bārī)* (2/350), 'It's *Isnād* is acceptable (*Ḥasan*).'"

On the day of the Trench ‘Umar came, cursing the disbelievers of Quraysh and said, “O Messenger of Allāh! I have not offered the ‘Aṣr prayer and the sun has set.” The Prophet ﷺ replied, “By Allāh! I too have not offered the prayer yet.” The Prophet then went to Buṭhān, performed ablution and prayed the ‘Aṣr prayer after the sun had set and then offered the *Maghrib* prayer after it.

Al-Bukhārī رحمه الله also narrates in his chapter entitled, ‘The Prayer of the Pursuer and the Pursued Riding and Nodding’:

وَقَالَ الْوَلِيدُ: ذَكَرْتُ لِلْأَوْزَاعِيِّ صَلَاةَ شُرَحْبِيلَ بْنِ السَّمْطِ وَأَصْحَابِهِ عَلَى ظَهْرِ الدَّابَّةِ، فَقَالَ: «كَذَلِكَ الْأَمْرُ عِنْدَنَا إِذَا تَخَوَّفَ الْفَوْتُ» وَاحْتَجَّ الْوَلِيدُ: بِقَوْلِ النَّبِيِّ ﷺ: «لَا يُصَلِّيَنَّ أَحَدُ الْعَصْرِ إِلَّا فِي بَنِي قُرَيْظَةَ»

Al-Walīd said that he recalled from al-Awzā’ī that of Shuraḥbīl ibn as-Simṭ and his companions would pray whilst riding, and he said, “And according to us, one can do likewise if he fears the opportunity would be lost.”⁶¹⁰ Al-Walīd relied upon for evidence the words of the Prophet ﷺ, “No one should pray ‘Aṣr expect at (the fortresses) of Banī Quraydhah.”

عَنِ ابْنِ عُمَرَ، قَالَ: قَالَ النَّبِيُّ ﷺ لَنَا لَمَّا رَجَعَ مِنَ الْأَحْزَابِ: «لَا يُصَلِّيَنَّ أَحَدُ الْعَصْرِ إِلَّا فِي بَنِي قُرَيْظَةَ» فَأَدْرَكَ بَعْضُهُمُ الْعَصْرَ فِي الطَّرِيقِ، فَقَالَ بَعْضُهُمْ: لَا نُصَلِّي حَتَّى نَأْتِيَهَا، وَقَالَ بَعْضُهُمْ: بَلْ نُصَلِّي، لَمْ يُرَدِّ مِنَّا ذَلِكَ، فَذَكَرَ لِلنَّبِيِّ ﷺ، فَلَمْ يُعْنَفْ وَاحِدًا مِنْهُمْ

Ibn ‘Umar narrates that the Prophet ﷺ said to us when he was returning from (the battle of) *al-Aḥzāb*, “No one should pray ‘Aṣr expect at (the fortresses) of Banī Quraydhah.” Therefore, some

⁶¹⁰ Muṣṭafā al-Baghā says about the narration in his commentary on *Ṣaḥīḥ al-Bukhārī* that the words (تَخَوَّفَ الْفَوْتُ) means that one fears that if he dismounts to pray he would miss the time for prayer, or the enemy would escape from him

of them prayed 'Aṣr on the way. So some of them said, "We will not pray until we get there." While others said, "Rather we will pray, as he did not intend from us that (i.e. what you are saying)." This (incident) was mentioned to the Prophet ﷺ but he did not criticise any one (of the two groups).⁶¹¹

ما يعتبر خوفاً في الصلاة الخوف؟

WHAT QUALIFIES AS 'FEAR' IN THE CASE OF THE FEAR PRAYER?

In *Subul as-Salām: Kitāb aṣ-Ṣalāh* (1/380) *Imām aṣ-Ṣan'ānī* رحمه الله says, "The one praying must be pursued by the enemy and not pursuing them, because if he is pursuing them he is able to perform a complete prayer. (However), if he fears that the enemy (he is pursuing) may counter-attack him (then he may perform the Fear Prayer)."

Ash-Shāfi'ī رحمه الله held a similar opinion, however with the additional conditions that the pursuer must be cut off from the rest of his forces and also afraid that if he were to stop to perform a complete prayer, the enemy would escape. While Mālik رحمه الله holds that it can be performed whether one fears from the enemy or anything else he feels is endangering his life, but says in all cases except that of fear of the enemy, it is desirable to repeat the prayer if he returns to a situation of safety before the time for the prayer elapses.

The majority of scholars however make no distinction between the enemy and anything else that poses a threat to one's life. They likewise hold that the prayer does not have to be repeated in a situation of safety, except *Imām Abū Hanīfah* رحمه الله, who

⁶¹¹ *Ṣaḥīḥ al-Bukhārī: The Chapters of the Fear Prayer* (946)

argues the prayer should be repeated, as was discussed by al-Qurṭubī رحمه الله in his *Tafsīr* (2/190) of the noble verse in *Sūrah al-Baqarah* (2:239).

As-Sa'dī رحمه الله summarises the majority opinion as he comments on Allāh's words (2:239):

﴿فَإِنْ خِفْتُمْ﴾

And if you fear

“It is not mentioned what is to be feared, and as such, it encompasses the fear of the disbeliever, the oppressor, the wild beast, or other than these from the types of things that inspire fear.”⁶¹²

Although, the fear of enemy attack is explicitly mentioned by Allāh ﷻ as He instructs the believers who are in a group in *Sūrah an-Nisā'* (4:102), saying:

﴿وَإِذَا كُنْتَ فِيهِمْ فَأَقَمْتَ لَهُمُ الصَّلَاةَ فَلْتَقُمْ طَآئِفَةٌ مِّنْهُمْ مَعَكَ وَلْيَأْخُذُوا أَسْلِحَتَهُمْ فَإِذَا سَجَدُوا فَلْيَكُونُوا مِن وَرَائِكُمْ وَلْتَأْتِ طَآئِفَةٌ أُخْرَى لَمْ يُصَلُّوا فَلْيُصَلُّوا مَعَكَ وَلْيَأْخُذُوا حِذْرَهُمْ وَأَسْلِحَتَهُمْ وَذَ الَّذِينَ كَفَرُوا لَوْ تَغْفُلُونَ عَنْ أَسْلِحَتِكُمْ وَأَمْتِعَتِكُمْ فَيَمِيلُونَ عَلَيْكُمْ مَّيْلَةً وَحِدَةً﴾

And when you [i.e., the commander of an army] are among them and lead them in prayer, let a group of them stand [in prayer] with you and let them carry their arms. And when they have prostrated, let them

⁶¹² *Taysīr al-Karīm ar-Raḥmān* (p.89)

be [in position] behind you and have the other group come forward which has not [yet] prayed and let them pray with you, taking precaution and carrying their arms. Those who disbelieve wish that you would neglect your weapons and your baggage so they could come down upon you in one [single] attack.

جمع بين الروايات في الصلاة الجوف

RECONCILING BETWEEN THE DIFFERENT NARRATIONS CONCERNING THE DESCRIPTION OF THE FEAR PRAYER

Muslim رحمه الله narrates from ibn ‘Abbās رضي الله عنهما in his *Ṣaḥīḥ: The Book of Prayer* (687):

فَرَضَ اللَّهُ الصَّلَاةَ عَلَى لِسَانِ نَبِيِّكُمْ ﷺ فِي الْحَضَرِ أَرْبَعًا، وَفِي السَّفَرِ رَكْعَتَيْنِ، وَفِي الْخَوْفِ رَكْعَةً

“Allāh has ordained the prayer upon the tongue of your Prophet ﷺ: four *Rak’ah* while residing, two *Rak’ah* while travelling, and one *Rak’ah* during times of fear.”⁶¹³

An-Nawawī رحمه الله comments on this *Ḥadīth* in *al-Minhāj* (2/793) saying, “A group from the *Salaf* acted according to the apparent meaning of this *Ḥadīth*, and from them were al-Ḥasan, aḍ-Ḍaḥḥak, and Ishāq ibn Rahawayh. However, ash-Shāfi’ī, Mālik, and majority of the scholars, held that the Fear Prayer, in terms of its *Rak’āt* (i.e. units), is the same as the prayer whilst safe. As

⁶¹³ Also in *Sunan Abū Dāwūd: The Book of the Prayer* (1247), *Sunan an Nasā’ī: The Book of the Prayer* (456), and *Sunan ibn Mājah: The Book of the Establishment of the Prayer and the Sunnah Regarding it* (1068)

such, if one is resident it is *Wājib* to pray four *Rak'āt*, and it not permissible to shorten it to one *Rak'ah* under any circumstances.

They consider ibn 'Abbās intended with his statement; one *Rak'ah* with the *Imām*, and one *Rak'ah* performed after that on one's own, as has been reported in the authentic narrations concerning the Prophet's ﷺ and his Companion's رَضِيَ اللَّهُ عَنْهُ prayer during times of fear. And this is the reasoning that should be followed according to the necessity of reconciling between the evidences,⁶¹⁴ and Allāh knows best.”

However, it is also possible that ibn 'Abbās رَضِيَ اللَّهُ عَنْهُ was referring to yet another variation of the Fear Prayer. Giving weight to this possibility and the opinion that the narration is to be acted upon according to its literal wording, is what has been narrated by Hudhayfah رَضِيَ اللَّهُ عَنْهُ:

فَصَلَّى بِهِؤُلَاءِ رَكْعَةً، وَبِهِؤُلَاءِ رَكْعَةً، وَلَمْ يَقْضُوا

“The Prophet ﷺ prayed the Fear Prayer with these people one *Rak'ah* and with those one *Rak'ah*, and none of them made up anything afterwards.”⁶¹⁵

Aṣ-Ṣan'ānī رَضِيَ اللَّهُ عَنْهُ says in *Subul as-Salām* (1/379), “And this is the manner prayed by Hudhayfah in Tiberistan, and the *Amīr* was Sa'īd ibn al-'Ās who said:

أَيُّكُمْ صَلَّى مَعَ رَسُولِ اللَّهِ ﷺ صَلَاةَ الْخَوْفِ؟ فَقَالَ حُذَيْفَةُ: أَنَا

⁶¹⁴ Scholars agree that in the face of apparently contradicting narrations that are authentic, it is *Wājib* to first attempt to find a way to reconcile between them before resorting to labelling some as abrogated, and others as those that abrogate.

⁶¹⁵ *Musnad Aḥmad: Musnad al-Anṣār* (1247), *Sunan Abī Dāwūd: The Book of the Prayer* (1246), *Sunan an-Nasā'ī: The Book of the Fear Prayer* (1530), and authenticated by ibn Hibbān and al-Albānī in *al-'Irwā* (3/44). Similar has also been narrated by ibn Khuzaymah in his *Ṣaḥīḥ* from ibn 'Abbās.

‘Did any of you prayer the Fear Prayer with the Messenger of Allāh ﷺ?’ Hudhayfah said, ‘I did,’⁶¹⁶

Therefore, he prayed with them in this manner. Due to this, ‘Aṭā, Ṭāwūs, al-Ḥasan, and others said that, ‘On that day, due to the severity of fear (i.e. danger), they prayed one *Rak’ah* by gesturing.’”

An-Nawawī رحمه الله also says (2/904), “Ibn al-Qaṣṣār mentions that the Prophet ﷺ prayed (the fear prayer) on ten occasions. The preferable opinion is that all of them (i.e. the different variations that have been authentically narrated) are permissible according to the situation. Al-Khaṭṭābī said, ‘The Fear Prayer is of different types; and the Prophet ﷺ prayed it on different days and in different ways, and as such, on each occasion he chose that which was most suitable for the prayer and most strategic for guarding. So (the fear prayer) is different in its forms, but the same in its meaning.’”

In his *Tafsīr* (3/319) al-Qurṭubī رحمه الله also cites this opinion stating, “Al-Imām Aḥmad ibn Ḥanbal said (regarding the Fear Prayer), and he is the leader of the scholars of *Ḥadīth* and the

⁶¹⁶ *Sunan Abī Dāwūd: The Book of the Prayer* (1246). The full narration is as follows:

عَنْ ثَعْلَبَةَ بْنِ زَهْدَمٍ، قَالَ: كُنَّا مَعَ سَعِيدِ بْنِ الْعَاصِ بِطَبْرِسْتَانَ، فَقَامَ، فَقَالَ: أَتَيْكُمْ صَلَّى مَعَ رَسُولِ اللَّهِ ﷺ صَلَاةُ الْخَوْفِ؟ فَقَالَ حُذَيْفَةُ: أَنَا، «فَصَلَّيْ بِهِؤُلَاءِ رَكْعَةً، وَبِهِؤُلَاءِ رَكْعَةً، وَلَمْ يَقْضُوا»، قَالَ أَبُو دَاوُدَ: وَكَذَا رَوَاهُ عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ، وَمُجَاهِدٌ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ، وَعَبْدُ اللَّهِ بْنُ شَقِيقٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ وَيَزِيدُ الْفَقِيرُ، وَأَبُو مُوسَى، قَالَ أَبُو دَاوُدَ: رَجُلٌ مِنَ التَّابِعِينَ لَيْسَ بِالْأَشْعَرِيِّ جَمِيعًا، عَنْ جَابِرٍ، عَنِ النَّبِيِّ ﷺ. وَقَدْ قَالَ بَعْضُهُمْ: عَنْ شُعْبَةَ فِي حَدِيثِ يَزِيدَ الْفَقِيرِ: إِنَّهُمْ قَضَوْا رَكْعَةً أُخْرَى. وَكَذَلِكَ رَوَاهُ سِمَاكُ الْحَنْفِيُّ، عَنْ ابْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ، وَكَذَلِكَ رَوَاهُ. زَيْدُ بْنُ ثَابِتٍ، عَنِ النَّبِيِّ ﷺ قَالَ: فَكَانَتْ لِلْقَوْمِ رَكْعَةً رَكْعَةً، وَلِلنَّبِيِّ ﷺ رَكْعَتَيْنِ

foremost amongst them in knowledge of the defects of the narrations, ‘I am not aware of any narration concerning the Fear Prayer except that it is authentic. Therefore, according to any one of the narrations regarding the Fear Prayer the (Muslim) acts, then he will be rewarded - if Allāh wills.’ This is likewise the stance of Abū Ja’far at-Ṭabarī...”

As-Sa’dī رَحِمَهُ اللهُ says in his *Tafsīr* (p.178), “Numerous variations of the Fear Prayer are authentically attributed to the Prophet ﷺ, and all of them are permissible (to act according to).”

In addition, Shaykh ‘Abdullāh ibn ‘Abd ar-Raḥmān Āl Bassām says in *Taysīr al-‘Allām* (p.296), “There is no reason for it (i.e. the Fear Prayer) except fear, (whether while one is) resident or travelling, and it has been authentically reported in the Book, *Sunnah*, and the *Ijmā’*. Its form has been narrated in a number of ways, each of them being permissible (to act upon). It has been legislated as a concession and mercy for those who pray during extreme situations. Thus, one can select whichever one of its various forms is most suitable for those praying, which will differ depending on the direction of the enemy, their distance, and the level of fear (i.e. danger).”

Indeed Allāh ﷻ has informed the believers of His kindness and mercy towards them in *Sūrah al-Baqarah* (2:185), saying:

﴿يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ﴾

Allāh intends for you ease and does not intend for you hardship

And in *Sūrah al-Ḥajj* (22:78):

﴿وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ﴾

And strive for Allāh with the striving due to Him. He has chosen you and has not placed upon you in the religion any difficulty.

Accordingly, scholars have derived the principle of *Fiqh*, as worded by as-Sa'dī رَحِمَهُ اللَّهُ in his poem:

قَاعِدَةُ الشَّرِيعَةِ التَّيْسِيرُ، فِي كُلِّ أَمْرٍ نَابَهُ تَعْسِيرُ

“A principle of the *Sharī'ah* is (to bring) ease in every matter wherein there is difficulty.”⁶¹⁷ This means that, if in performing any of the obligations the believer experiences (unusual) difficulty or hardship. The *Sharī'ah* has emplaced concessions aimed at easing the believer's affair, whilst not decreasing from his reward or rendering him sinful - and all praises are due to Allāh.

كيفية الصلاة الخوف

DESCRIPTION OF THE FEAR PRAYER

As has been mentioned, the Prophet ﷺ prayed *Ṣalāh al-Khawf* in congregation on a number of different occasions and in a number of different forms. There is a difference amongst scholars as to the exact date of the legislation of the Fear Prayer. Nevertheless, owing to the authentic narrations, it would appear that it was legislated during the battle of *Dhāt ar-Riqā'*, which

⁶¹⁷ Refer to *al-Qawā'id al-Fiqhiyyah* (pgs.122&123). This principle is also commonly worded as (المشقة تجلب التيسير)

according to scholars such as *Imām al-Bukhārī* رحمه الله took place in the fourth year after the *Hijrah*. Accordingly, it would mean the number of battles the Prophet ﷺ himself participated in after the legislation of the Fear Prayer was in excess of ten battles.⁶¹⁸ As such, it is reasonable to assume that he ﷺ must have led his Companions رضي الله عنهم in the Fear Prayer on numerous occasions throughout these years and expeditions, many of which lasted from anywhere between several days to a number of weeks. With no two situations being exactly the same with regards to the direction (in relation to the *Qiblah*), distance, time of day, and level of threat posed by the enemy, and Allāh ﷻ surely knows best. Accordingly, these differences in situation the believers were faced with account for the differences found in the manner the Fear Prayer was performed by the Prophet ﷺ and his Companions رضي الله عنهم throughout the years.

The scholars have differed over the exact number of variations in which the Fear Prayer was performed, with some adopting a more conservative approach, such as *Imām Mālik* رحمه الله, holding there to be around six or seven variations.⁶¹⁹ While scholars such as *ibn al-‘Arabī* رحمه الله counted as many as twenty-four variations. However it is possible, as highlighted by scholars such as *aṣ-Ṣan’ānī* رحمه الله, that there may be an element of repetition in some of the higher estimates.⁶²⁰

⁶¹⁸ According to *ibn an-Nuḥḥās*’ estimate in *Mashāri’ al-Ashwāq* (p.844). He holds the Prophet ﷺ participated in a total of twenty-seven battles during his Prophethood, with the battle of *Dhāt ar-Riqqā’* being the fourteenth of them. *Al-Qurṭubī* quotes *ibn al-Qaṣṣār* in his *Tafsīr* (3/318) supporting this view, “He ﷺ prayed (the Fear Prayer) on ten occasions.”

⁶¹⁹ As is evident in his *Fatāwā Nūr ‘alā ad-Darb* (5/500), this was also the opinion favoured by *Shaykh ibn al-‘Uthaymīn*

⁶²⁰ Refer to *Jāmi’ li’Aḥkām al-Qur’ān* (3/318&319). This is a relatively common phenomenon, as known by those familiar with the field of *Ḥadīth Science* (*‘Ulūm al-Ḥadīth*). As such, there existed numerous scholars who, when confronted with an narration from a particular companion, would regard each of its chains of narration as separate narrations, even though they may all share the same, or very similar wording and meaning. Thus, in this case it is

A number of these variations are as follows:

- 1) The *Imām* prays four *Rak'āt* with one *Taslīm*,⁶²¹ while those praying behind him pray only two *Rak'āt*.

In *Ṣaḥīḥ al-Bukhārī: The Book of Battles led by the Prophet ﷺ* (4129) and *Ṣaḥīḥ Muslim: The Book of the Prayer of the Traveller and Shortening it* (843) Jābir رَضِيَ اللَّهُ عَنْهُ narrates:

عَنْ جَابِرٍ، قَالَ: أَقْبَلْنَا مَعَ رَسُولِ اللَّهِ ﷺ حَتَّى إِذَا كُنَّا بِذَاتِ الرَّقَاعِ، قَالَ: كُنَّا إِذَا أَتَيْنَا عَلَى شَجَرَةٍ ظَلِيلَةٍ تَرْكُنَاهَا لِرَسُولِ اللَّهِ ﷺ، قَالَ: فَجَاءَ رَجُلٌ مِنَ الْمُشْرِكِينَ وَسَيْفُ رَسُولِ اللَّهِ ﷺ مُعَلَّقٌ بِشَجَرَةٍ، فَأَخَذَ سَيْفَ نَبِيِّ اللَّهِ ﷺ فَأَخْتَرَطَهُ، فَقَالَ لِرَسُولِ اللَّهِ ﷺ: أَتَخَافُنِي؟ قَالَ: «لَا»، قَالَ: فَمَنْ يَمْنَعُكَ مِنِّي؟ قَالَ: «اللَّهُ يَمْنَعُنِي مِنْكَ»، قَالَ: فَتَهَدَّدَهُ أَصْحَابُ رَسُولِ اللَّهِ ﷺ فَأَغْمَدَ السَّيْفَ، وَعَلَّقَهُ، قَالَ: فَنُودِيَ بِالصَّلَاةِ، فَصَلَّى بِطَائِفَةٍ رَكَعَتَيْنِ، ثُمَّ تَأَخَّرُوا، وَصَلَّى بِالطَّائِفَةِ الْأُخْرَى رَكَعَتَيْنِ، قَالَ: فَكَانَتْ لِرَسُولِ اللَّهِ ﷺ أَرْبَعُ رَكَعَاتٍ، وَلِلْقَوْمِ رَكَعَتَانِ

We went forward with the Messenger of Allāh ﷺ until we reached *Dhāt ar-Riqā'*. We came to a shady tree which we left for the Messenger of Allāh ﷺ. At this, one of the polytheists

plausible that when a particular scholar came across narrations from different Companions all describing the same instance of the Prophet ﷺ praying the Fear Prayer. He, instead of regarding the narrations collectively as one method of the prayer, counted them all as different methods, perhaps owing to a difference in the wording of the narrations, even if they convey the same general meaning - and Allāh knows best.

⁶²¹ The *Taslīm* refers to the act of saying at the end of the prayer, 'as-Salāmu 'alaykum wa Raḥmatullāh' to the right, and then repeating it to the left side, as per the Prophet's ﷺ most common method of performing it. Nevertheless, it has been authentically reported that he ﷺ did occasionally perform it in a number of different ways. Refer to al-Albānī's *The Prophet's Prayer Described* for more details on the description of the Prophet's ﷺ *Taslīm*

approached (whilst the Muslims were asleep) and, seeing the sword of the Messenger ﷺ hanging from the tree, took it, unsheathed it and said to the Messenger of Allāh ﷺ, “Are you afraid of me?” He replied, “No.” The man then said, “Who will protect you from me?” He replied, “Allāh is the One that will protect me from you.” The Companions of the Messenger of Allāh ﷺ then threatened him so he sheathed the sword and hung it back on the tree. Then the call to prayer was made and he (ﷺ) led a group in two *Rak'āt*. Then (the members of this group) withdrew, and he led the second group in two *Rak'āt*. Thus, the Messenger of Allāh ﷺ prayed four *Rak'āt* and (each group) prayed two *Rak'āt*.

- 2) The *Imām* prays four *Rak'āt*: Two *Rak'āt* with one group then utters the *Taslīm*, and then prays two *Rak'āt* with the second group and makes the *Taslīm*.

In *Sunan Abī Dāwūd: The Book of the Prayer* (1248) Abū Bakrah رَضِيَ اللَّهُ عَنْهُ narrated:

صَلَّى النَّبِيُّ ﷺ فِي خَوْفِ الظُّهْرِ، فَصَفَّ بَعْضُهُمْ خَلْفَهُ، وَبَعْضُهُمْ يَأْزَاءِ الْعَدُوِّ، فَصَلَّى بِهِمْ رَكْعَتَيْنِ، ثُمَّ سَلَّمَ فَأَنْطَلَقَ الَّذِينَ صَلَّوْا مَعَهُ، فَوَقَفُوا مَوْقِفَ أَصْحَابِهِمْ، ثُمَّ جَاءَ أُولَئِكَ فَصَلَّوْا خَلْفَهُ، فَصَلَّى بِهِمْ رَكْعَتَيْنِ، ثُمَّ سَلَّمَ، فَكَانَتْ لِرَسُولِ اللَّهِ ﷺ أَرْبَعًا، وَلِأَصْحَابِهِ رَكْعَتَيْنِ رَكْعَتَيْنِ

The Prophet ﷺ offered the noon prayer in a time of danger. Some of the people formed a row behind him and others arrayed themselves in the direction of the enemy. He led them in two *Rak'āt* and then he uttered the *Taslīm*. Then those who were with him went away and took the position of their companions before the enemy. Then they came and prayed behind him. He led them in two *Rak'āt* and uttered the *Taslīm*. Thus, the Messenger of

Allāh ﷺ offered four *Rak'āt* and his Companions offered two *Rak'āt*.⁶²²

- 3) The *Imām* prays one *Rak'ah* with each group, makes the *Taslīm* and then each group makes up its second *Rak'ah*.

In *Ṣaḥīḥ al-Bukhārī: The Book of the Fear Prayer* (942) and *Ṣaḥīḥ Muslim: The Book of Mosques and the Places of Prayer* (839) ibn 'Umar narrates, with al-Bukhārī's رَجَمَهُمَا اللَّهُ wording:

عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: «غَزَوْتُ مَعَ رَسُولِ اللَّهِ ﷺ، قَبْلَ نَجْدٍ، فَوَارَيْنَا الْعَدُوَّ فَصَافَفْنَاهُمْ، فَقَامَ رَسُولُ اللَّهِ ﷺ، فَصَلَّى بِنَا، فَقَامَتْ طَائِفَةٌ مَعَهُ، وَأَقْبَلَتْ طَائِفَةٌ عَلَى الْعَدُوِّ، وَرَكَعَ بَيْنَ مَعَهُ، وَسَجَدَ سَجْدَتَيْنِ، ثُمَّ انْصَرَفُوا مَكَانَ الطَّائِفَةِ الَّتِي لَمْ تُصَلِّ، فَجَاءُوا فَرَكَعَ بِهِمْ رَكْعَةً، وَسَجَدَ سَجْدَتَيْنِ، ثُمَّ سَلَّمَ فَقَامَ كُلُّ وَاحِدٍ مِنْهُمْ، فَرَكَعَ رَكْعَةً، وَسَجَدَ سَجْدَتَيْنِ». مُتَّفَقٌ عَلَيْهِ وَاللَّفْظُ لِلْبُخَارِيِّ

“I took part in an expedition with the Messenger of Allāh ﷺ in the direction of Najd. We faced the enemy and arranged ourselves in rows. Then the Messenger of Allāh ﷺ stood up to lead the prayer with us, and one party stood to pray with him while the other faced the enemy. The Messenger of Allāh ﷺ and the party with him bowed and performed two prostrations, then they left and took the place of those who had not yet prayed. The Messenger of Allāh bowed and performed two prostrations and finished his prayer with the *Taslīm*. Then every one bowed once and performed two prostrations individually (i.e. completed their second *Rak'ah*).”

⁶²² Similar narrations are also present in *Musnad Aḥmad: Musnad al-Baṣriyyīn* (20408) and *Sunan an-Nasā'ī: The Book of the Imamate* (836)

4) The *Rukū'* is made by the *Imām* and both groups together.

Muslim رحمه الله narrates in his *Ṣaḥīḥ: The Book of Mosques and the Places of Prayer* (840) that Jābir رضي الله عنه said:

«شَهِدْتُ مَعَ رَسُولِ اللَّهِ ﷺ صَلَاةَ الْخَوْفِ، فَصَفَّنَا صَفَيْنِ، صَفٌّ خَلْفَ رَسُولِ اللَّهِ ﷺ، وَالْعَدُوُّ بَيْنَنَا وَبَيْنَ الْقِبْلَةِ، فَكَبَّرَ النَّبِيُّ ﷺ، وَكَبَّرْنَا جَمِيعًا، ثُمَّ رَكَعَ، وَرَكَعْنَا جَمِيعًا، ثُمَّ رَفَعَ رَأْسَهُ مِنَ الرُّكُوعِ، وَرَفَعْنَا جَمِيعًا، ثُمَّ انْحَدَرَ بِالسُّجُودِ، وَالصَّفُّ الَّذِي يَلِيهِ، وَقَامَ الصَّفُّ الْمُؤَخَّرُ فِي نَحْرِ الْعَدُوِّ، فَلَمَّا قَضَى النَّبِيُّ ﷺ السُّجُودَ، وَقَامَ الصَّفُّ الَّذِي يَلِيهِ، انْحَدَرَ الصَّفُّ الْمُؤَخَّرُ بِالسُّجُودِ، وَقَامُوا، ثُمَّ تَقَدَّمَ الصَّفُّ الْمُؤَخَّرُ، وَتَأَخَّرَ الصَّفُّ الْمُقَدَّمُ، ثُمَّ رَكَعَ النَّبِيُّ ﷺ وَرَكَعْنَا جَمِيعًا، ثُمَّ رَفَعَ رَأْسَهُ مِنَ الرُّكُوعِ وَرَفَعْنَا جَمِيعًا، ثُمَّ انْحَدَرَ بِالسُّجُودِ وَالصَّفُّ الَّذِي يَلِيهِ الَّذِي كَانَ مُؤَخَّرًا فِي الرُّكْعَةِ الْأُولَى، وَقَامَ الصَّفُّ الْمُؤَخَّرُ فِي نُحُورِ الْعَدُوِّ، فَلَمَّا قَضَى النَّبِيُّ ﷺ السُّجُودَ وَالصَّفُّ الَّذِي يَلِيهِ، انْحَدَرَ الصَّفُّ الْمُؤَخَّرُ بِالسُّجُودِ، فَسَجَدُوا، ثُمَّ سَلَّمَ النَّبِيُّ ﷺ وَسَلَّمْنَا جَمِيعًا». قَالَ جَابِرٌ: كَمَا يَصْنَعُ حَرَسُكُمْ هَؤُلَاءِ بِأَمْرَائِهِمْ

“I observed the Fear Prayer with the Messenger of Allāh ﷺ. We arranged ourselves in two rows behind the Messenger of Allāh ﷺ with the enemy between us and the *Qiblah*. The Prophet ﷺ made the *Takbīr*⁶²³ and (then) we all made the *Takbīr*. He then bowed and we all bowed. He then raised his head from bowing, and we all raised (our heads). He then prostrated along with the row closest to him, and the rear row remained facing the enemy. Then when the Prophet ﷺ completed the prostration and then stood up, the row near to him also did it, then the rear row completed their prostration then stood up; then the rear row went to the front and the front row went to the rear. Then the Prophet

⁶²³ The *Takbīr* (تكبير) is to say “*Allāhu Akbar*” (Allāh is the Greatest)

ﷺ bowed down and we all bowed. He then raised his head from bowing and we also raised (our heads). He and the row close to him, which had been in the rear then prostrated. Whereas the rear row remained facing the enemy. When the Prophet ﷺ and the row closest to him had finished the prostration, the rear row prostrated. The Prophet ﷺ pronounced the *Taslīm*, and we also pronounced the *Taslīm* all together.” Jābir added, “Just as your guards behave with their leaders.”

- 5) The *Imām* prays two *Rak'āt* and each of the two groups prayed one *Rak'ah* with him (and the other by themselves), then all make the *Taslīm* together.

In *Sunan Abī Dāwūd: The Book of the Prayer* (1240) the following narration is recorded:

عَنْ مَرْوَانَ بْنِ الْحَكَمِ، أَنَّهُ سَأَلَ أَبَا هُرَيْرَةَ، هَلْ صَلَّيْتَ مَعَ رَسُولِ اللَّهِ ﷺ صَلَاةَ الْخَوْفِ؟ قَالَ أَبُو هُرَيْرَةَ: نَعَمْ، قَالَ مَرْوَانُ: مَتَى؟ فَقَالَ أَبُو هُرَيْرَةَ: «عَامَ غَزْوَةِ نَجْدٍ قَامَ رَسُولُ اللَّهِ ﷺ إِلَى صَلَاةِ الْعَصْرِ، فَقَامَتْ مَعَهُ طَائِفَةٌ، وَطَائِفَةٌ أُخْرَى مُقَابِلَ الْعَدُوِّ، وَظُهُورُهُمْ إِلَى الْقِبْلَةِ، فَكَبَّرَ رَسُولُ اللَّهِ ﷺ، فَكَبَّرُوا جَمِيعًا، الَّذِينَ مَعَهُ وَالَّذِينَ مُقَابِلِي الْعَدُوِّ، ثُمَّ رَكَعَ رَسُولُ اللَّهِ ﷺ رَكْعَةً وَاحِدَةً، وَرَكَعَتِ الطَّائِفَةُ الَّتِي مَعَهُ، ثُمَّ سَجَدَ فَسَجَدَتِ الطَّائِفَةُ الَّتِي تَلِيهِ، وَالْآخَرُونَ قِيَامًا مُقَابِلِي الْعَدُوِّ، ثُمَّ قَامَ رَسُولُ اللَّهِ ﷺ، وَقَامَتِ الطَّائِفَةُ الَّتِي مَعَهُ فَذَهَبُوا إِلَى الْعَدُوِّ، فَقَابَلُوهُمْ وَأَقْبَلَتِ الطَّائِفَةُ الَّتِي كَانَتْ مُقَابِلِي الْعَدُوِّ فَرَكَعُوا وَسَجَدُوا، وَرَسُولُ اللَّهِ ﷺ قَائِمٌ كَمَا هُوَ، ثُمَّ قَامُوا فَرَكَعَ رَسُولُ اللَّهِ ﷺ رَكْعَةً أُخْرَى، وَرَكَعُوا مَعَهُ، وَسَجَدَ وَسَجَدُوا مَعَهُ، ثُمَّ أَقْبَلَتِ الطَّائِفَةُ الَّتِي كَانَتْ مُقَابِلِي الْعَدُوِّ، فَرَكَعُوا وَسَجَدُوا وَرَسُولُ اللَّهِ ﷺ قَاعِدٌ، وَمَنْ كَانَ مَعَهُ،

ثُمَّ كَانَ السَّلَامُ، فَسَلَّمَ رَسُولُ اللَّهِ ﷺ وَسَلَّمُوا جَمِيعًا، فَكَانَ لِرَسُولِ اللَّهِ ﷺ رَكَعَتَانِ، وَلِكُلِّ رَجُلٍ مِّنَ الطَّائِفَتَيْنِ رَكَعَةٌ، رَكَعَةٌ»

‘Urwah ibn az-Zubayr reported that Marwan ibn al-Ḥakam asked Abū Hurayrah, “Did you pray the Fear Prayer with the Messenger of Allāh ﷺ?” Abū Hurayrah replied, “Yes.” Marwan then asked, “When?” Abū Hurayrah said, “On the occasion of the Battle of Najd. The Messenger of Allāh ﷺ stood up to offer the ‘Aṣr prayer. One group stood with him (to pray) and the other was standing before the enemy, and their backs were towards the *Qiblah*. The Messenger of Allāh ﷺ uttered the *Takbīr* and all of them too uttered the *Takbīr*, i.e. those who were with him and those who were facing the enemy. Then the Messenger of Allāh ﷺ offered one *Rak’ah* and the group that was with him also prayed one *Rak’ah*. He then prostrated and those who were with him also prostrated, while the other group was standing before the enemy. The Messenger of Allāh ﷺ then stood up and the group with him also stood up. They went and faced the enemy and the group that was previously facing the enemy stepped forward. They bowed and prostrated while the Messenger of Allāh ﷺ was standing in the same position. Then they stood up and the Messenger of Allāh ﷺ prayed another *Rak’ah* and all of them bowed and prostrated along with him. After that, the group that was standing before the enemy came forward and they bowed and prostrated, while the Messenger of Allāh ﷺ remained seated and also those who were with him. The *Taslīm* then followed. The Messenger of Allāh ﷺ uttered the *Taslīm* and all of them uttered it together. The Messenger of Allāh ﷺ prayed two *Rak’āt* and each of the two groups prayed one *Rak’ah* with him (and the other by themselves).”

- 6) The *Imām* prays two *Rak’ah*, splitting the first between both parties. The *Imām* then completes a quick second *Rak’ah* with both parties simultaneously praying along with him.

Abū Dāwūd رَحِمَهُ اللهُ reports the following narration from 'Ā'ishah, the Mother of the Believers رَضِيَ اللهُ عَنْهَا, in his *Sunan: The Book of the Prayer* (1242):

أَنَّ عَائِشَةَ حَدَّثَتْهُ بِهَذِهِ الْقِصَّةِ، قَالَتْ: «كَبَّرَ رَسُولُ اللَّهِ ﷺ، وَكَبَّرَتِ الطَّائِفَةُ الَّذِينَ صَفُّوا مَعَهُ، ثُمَّ رَكَعَ فَرَكَعُوا، ثُمَّ سَجَدَ، فَسَجَدُوا، ثُمَّ رَفَعَ فَرَفَعُوا، ثُمَّ مَكَثَ رَسُولُ اللَّهِ ﷺ جَالِسًا، ثُمَّ سَجَدُوا لِأَنْفُسِهِمُ الثَّانِيَةَ، ثُمَّ قَامُوا فَنَكَصُوا عَلَى أَعْقَابِهِمْ يَمْشُونَ الْقَهْقَرَى، حَتَّى قَامُوا مِنْ وَرَائِهِمْ، وَجَاءَتِ الطَّائِفَةُ الْأُخْرَى، فَقَامُوا فَكَبَّرُوا، ثُمَّ رَكَعُوا لِأَنْفُسِهِمْ، ثُمَّ سَجَدَ رَسُولُ اللَّهِ ﷺ فَسَجَدُوا مَعَهُ، ثُمَّ قَامَ رَسُولُ اللَّهِ ﷺ وَسَجَدُوا لِأَنْفُسِهِمُ الثَّانِيَةَ، ثُمَّ قَامَتِ الطَّائِفَتَانِ جَمِيعًا فَصَلَّوْا مَعَ رَسُولِ اللَّهِ ﷺ، فَرَكَعَ فَرَكَعُوا، ثُمَّ سَجَدَ فَسَجَدُوا جَمِيعًا، ثُمَّ عَادَ فَسَجَدَ الثَّانِيَةَ، وَسَجَدُوا مَعَهُ سَرِيعًا كَأَسْرَعَ الْإِسْرَاعِ جَاهِدًا، لَا يَأْلُونَ سِرَاعًا، ثُمَّ سَلَّمَ رَسُولُ اللَّهِ ﷺ وَسَلَّمُوا، فَقَامَ رَسُولُ اللَّهِ ﷺ، وَقَدْ شَارَكَهُ النَّاسُ فِي الصَّلَاةِ كُلِّهَا»

The Messenger of Allāh ﷺ uttered the *Takbīr* and the group that was in the same row with him also uttered the *Takbīr*. He then bowed and they also bowed, and he prostrated and they prostrated. Then he raised his head and they raised (their heads). The Messenger of Allāh ﷺ then remained seated. They performed the second prostration alone, stood up, retraced their footsteps, and stood behind them (i.e. the second group). Then the other group came, stood up, uttered the *Takbīr* and bowed by themselves. The Messenger of Allāh ﷺ prostrated and they also prostrated with him. Then the Messenger of Allāh ﷺ stood up and they performed the second prostration by themselves. Then both groups stood up and prayed (the second and final *Rak'ah*) with the Messenger of Allāh ﷺ. He bowed and they also bowed, and then he prostrated and they prostrated. Then he returned and performed the second prostration and they prostrated with him as

quickly as possible, showing no slackness in quick prostration. The Messenger of Allāh ﷺ then uttered the *Taslīm*. After that, the Messenger of Allāh ﷺ stood up and thus everyone participated in the entire prayer (along with him).

- 7) The *Imām* prays one *Rak'ah* with the first group, then they complete their prayer on their own and then take up guarding positions.

In *Ṣaḥīḥ Muslim: The Book of the Prayer of the Traveller and its Shortening* (842) Ṣāliḥ ibn Khawwāt رَضِيَ اللَّهُ عَنْهُ narrates:

عَنْ صَالِحِ بْنِ خَوَاتٍ - رَضِيَ اللَّهُ عَنْهُ - عَمَّنْ «صَلَّى مَعَ النَّبِيِّ ﷺ يَوْمَ ذَاتِ الرَّقَاعِ صَلَاةَ الْخَوْفِ: أَنَّ طَائِفَةً مِنْ أَصْحَابِهِ ﷺ صَفَّتْ مَعَهُ وَطَائِفَةٌ وَجَاهَ الْعَدُوَّ. فَصَلَّى بِالَّذِينَ مَعَهُ رَكْعَةً، ثُمَّ ثَبَتَ قَائِمًا، وَأَتَمُّوا؛ لِأَنْفُسِهِمْ ثُمَّ انْصَرَفُوا فَصَفُّوا وَجَاهَ الْعَدُوَّ، وَجَاءَتِ الطَّائِفَةُ الْأُخْرَى، فَصَلَّى بِهِمُ الرُّكْعَةَ الَّتِي بَقِيَتْ، ثُمَّ ثَبَتَ جَالِسًا، وَأَتَمُّوا لِأَنْفُسِهِمْ، ثُمَّ سَلَّمَ بِهِمْ»

“On the authority of one who prayed the Fear Prayer with the Messenger of Allāh ﷺ at the Battle of *Dhāt ar-Riqā'*: A group formed a row and prayed along with him, and a group faced the enemy. He led the group that was along with him in one *Rak'ah*, and then remained standing while they finished the prayer by themselves. Then they departed and formed a row facing the enemy. Then the second group came and he led them in the remaining *Rak'ah*, after which he remained seated while they completed the rest of the prayer. He then led them in the *Taslīm*.”

- 8) The *Imām* prays two *Rak'āt* and each group prays only one *Rak'ah* without making anything up.

In *Sunan Abī Dāwūd: The Book of the Prayer* (1246) Tha'labah ibn Zahdam narrated رَوَاهُ عَنْهُ:

عَنْ ثَعْلَبَةَ بْنِ زَهْدَمٍ، قَالَ: كُنَّا مَعَ سَعِيدِ بْنِ الْعَاصِ بِطَبْرِسْتَانَ، فَقَامَ، فَقَالَ: أَيُّكُمْ صَلَّى مَعَ رَسُولِ اللَّهِ ﷺ صَلَاةَ الْخَوْفِ؟ فَقَالَ حُذَيْفَةُ: أَنَا، «فَصَلَّى بِهِؤُلَاءِ رَكْعَةً، وَبِهِؤُلَاءِ رَكْعَةً، وَلَمْ يَقْضُوا»

We accompanied Sa'īd ibn al-Āṣ at Ṭabaristan. He stood and said, "Who of you prayed the Fear Prayer with the Messenger of Allāh ﷺ?" Ḥudhayfah said, "I did." Then he led one group in one *Rak'ah* and the other group in one *Rak'ah*, and they did not make up the second *Rak'ah* by themselves.

These are a number of the authentic narrations detailing the differences between the various variations of the Fear Prayer as it is performed in congregation. Some scholars also include in their lists the various ways in which the Fear Prayer is performed individually, such as those recorded by al-Bukhārī رَحِمَهُ اللَّهُ in his *Ṣaḥīḥ: The Book of the Fear Prayer* under the chapter heading, 'Prayer While Confronting the Forts and Facing the Enemy':

وَقَالَ الْأَوْزَاعِيُّ: إِنْ كَانَ تَهَيَّأَ الْفَتْحُ وَلَمْ يَقْدِرُوا عَلَى الصَّلَاةِ صَلُّوا إِيمَاءً كُلُّ امْرِئٍ لِنَفْسِهِ، فَإِنْ لَمْ يَقْدِرُوا عَلَى الْإِيمَاءِ أَخْرُوا الصَّلَاةَ حَتَّى يَنْكَشِفَ الْقِتَالُ أَوْ يَأْمَنُوا، فَيُصَلُّوا رَكْعَتَيْنِ، فَإِنْ لَمْ يَقْدِرُوا صَلُّوا رَكْعَةً وَسَجَدَتَيْنِ، فَإِنْ لَمْ يَقْدِرُوا لَا يُجْزِئُهُمُ التَّكْبِيرُ، وَيُؤَخِّرُوهَا حَتَّى يَأْمَنُوا وَبِهِ قَالَ مَكْحُولٌ وَقَالَ أَنَسُ بْنُ مَالِكٍ: "حَضَرْتُ عِنْدَ مُنَاهِضَةِ حِصْنٍ تُسْتَرَّ عِنْدَ إِضَاءَةِ الْفَجْرِ، وَاشْتَدَّ اشْتِعَالُ الْقِتَالِ، فَلَمْ يَقْدِرُوا عَلَى الصَّلَاةِ، فَلَمْ نُصَلِّ إِلَّا بَعْدَ ارْتِفَاعِ النَّهَارِ، فَصَلَّيْنَاهَا وَنَحْنُ مَعَ أَبِي

مُوسَى فَفُتِحَ لَنَا، وَقَالَ أَنَسُ بْنُ مَالِكٍ: وَمَا يَسُرُّنِي بِتِلْكَ الصَّلَاةِ الدُّنْيَا
وَمَا فِيهَا

Al-Awzā'ī said, 'If victory seems near and the Muslims are unable to perform the prayer in the normal manner, they should pray by nodding each to himself. If they are unable to nod, they should delay the prayer until fighting is finished. When they feel safe, they should pray two *Rak'āt*. If they are unable, they should then pray one *Rak'ah* that includes two prostrations. If they are unable, then *Takbīr* alone does not suffice, so they should delay the prayer until they are safe.'

In addition, a number of scholars also consider the prayer delayed from its time due to the intensity of combat as one of the variations of the Fear Prayer, and thus further increasing the number of variations.⁶²⁴

الأمر لحمل السلاح في صلاة الخوف

THE COMMAND TO CARRY WEAPONS DURING THE FEAR PRAYER

Allāh ﷻ orders the believers in *Sūrah an-Nisā'* (4:102):

﴿فَلْيَصِلُوا أَمْعًا وَلْيَأْخُذُوا حِذْرَهُمْ وَأَسْلِحَتَهُمْ وَدَّ الَّذِينَ
كَفَرُوا لَوْ تَغْفُلُونَ عَنْ أَسْلِحَتِكُمْ وَأَمْتِعَتِكُمْ فَيَمِيلُونَ عَلَيْكُمْ
مَّيْلَةً وَاحِدَةً﴾

⁶²⁴ Refer to *at-Taḥfīr wa'l-Bayān li'Ahkām al-Qur'ān* (2/1018)

and let them pray with you, taking precaution and carrying their arms. Those who disbelieve wish that you would neglect your weapons and your baggage so they could come down upon you in one [single] attack.

In his *Tafsīr* (2/569&570) ibn Kathīr رَحِمَهُ اللهُ says, “As for the command to carry weapons during the Fear Prayer, a group of scholars said that it is *Wājib* according to the verse. What testifies to this is that Allāh said (4:102):

﴿وَلَا جُنَاحَ عَلَيْكُمْ إِن كَانَ بِكُمْ أَذًى مِّن مَّطَرٍ أَوْ كُنْتُمْ مَّرْضَىٰ
أَنْ تَضَعُوا أَسْلِحَتَكُمْ وَخُذُوا حِذْرَكُمْ﴾

But there is no blame upon you, if you are troubled by rain or are ill, for putting down your arms, but take precaution

Meaning, so that when necessary you will be able to get to your weapons easily,

﴿إِنَّ اللَّهَ أَعَدَّ لِلْكَافِرِينَ عَذَابًا مُّهِينًا﴾

Indeed Allāh has prepared for the disbelievers a humiliating punishment.

Al-Qurṭubī رَحِمَهُ اللهُ says in *Jāmī' li-Ahkām al Qur'ān* (2/323), “Ibn ‘Abbās said, ***and carrying their arms*** means the group in the direction of the enemy, as those praying are not fighting.’ While others say it is a command for those praying, meaning those praying should be first to carry their weapons, as mentioned by az-Zujāj. He said, ‘It is possible that the group that are in prayer are the ones ordered to carry their weapons... as this would terrorise the enemy.’ While an-Nuḥḥās said, ‘It is possible that it

refers to everyone, due to this being more terrifying for the enemy. It is also possible that it refers specifically to those facing in the direction of the enemy.’”

Allāh then gave a concession for instances wherein it is raining or in the case of illness which, according to al-Qurṭubī, refers to illness resulting from injury. He relies on the narration in *Ṣaḥīḥ al-Bukhārī: The Book of Tafsīr* (4599) in which ibn ‘Abbās رَضِيَ اللَّهُ عَنْهُ narrates, referring to Allāh’s words in *Sūrah an-Nisā’* (4:102):

﴿إِنْ كَانَ يَكُومُ آذَى مِنْ مَّطَرٍ أَوْ كُنْتُمْ مَّرْضَى﴾

if you are troubled by rain or are ill

عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ كَانَ جَرِيحًا

“(They were referring to) ‘Abd ar-Raḥmān ibn ‘Awf who was injured.”

As-Sa’dī رَضِيَ اللَّهُ عَنْهُ comments in his *Tafsīr* (p.178), “Indeed Allāh has pardoned those excused due to illness or rain, (and permitted them) to lay down their arms. However, they must take every precaution with this (concession, to guard against any possible enemy attack).”

Aṭ-Ṭarīfī says in his *Tafsīr* (2/1019), “Allāh has granted a concession with regards to carrying ones weapon during the prayer and outside of it, for those that would be harmed or put into sever difficulty by it. This concession is evidence of the default status of the *Wujūb* (obligation) regarding carrying weapons when faced with, or in close proximity to the enemy. The closer one gets, the severer the nature of the obligation due to the danger to the self, honour, and wealth present in such situations.”

This would - and Allāh knows best - appear to be the correct position regarding the obligation of the believers' carrying their weapons when in the proximity of the enemy, as evident by Allāh only permitting laying down ones arms:

﴿إِنْ كَانَ بِكُمْ أَذًى مِّن مَّطَرٍ أَوْ كُنْتُمْ مَّرْضَىٰ﴾

if you are troubled by rain or are ill.

A number of contemporary scholars mention that those praying may place their assault rifles and/light machine guns on the floor in front of them. Nevertheless, if manning crew served weapons, such as anti-air medium and heavy machine guns, tanks, anti-armour weapons and their likes, they should pray upon, or inside their weapons. This is because the enemy's attack may be rapid and unexpected, not affording them time leave their weapons unmanned. This is especially the case for anti-aircraft weapons, as the high speeds of fighter jets and bombers oblige their defenders to be in a constant state of readiness, according to Allāh's words:

﴿فَإِنْ خِفْتُمْ فَرِجَالًا أَوْ رُكْبَانًا﴾

And if you fear [an enemy, then pray] on foot or riding.

Likewise, if the situation warrants it, the *Mujāhidīn* may pray in their trenches, bunkers, and observation posts, ecetera. Even if there is not enough space to stand, bow, or prostrate fully, if praying in the open would expose them to unacceptable threat levels, according to the principles encompassed in Allāh's commands (4:102):

﴿وَخُذُوا حِذْرَكُمْ﴾

take (your) precautions

And (64:16):

﴿فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ﴾

fear Allāh as much as you are able

مراتب العجز عن أداء الصلاة عند العدو

LEVELS OF INABILITY WHEN PERFORMING THE PRAYER WHEN CONFRONTED BY THE ENEMY

It is *Wājib* to adhere to progressive levels (when lightening or subtracting from the prayer) according to the principle encompassed by the noble verse:

﴿فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ﴾

*fear Allāh as much as you are able*⁶²⁵

Firstly; whoever is able to perform the prayer in congregation, in one or two groups, and with one *Imām* as was detailed in the preceding narrations, is required to pray in this fashion (i.e. it is *Wājib*).

Secondly; if the congregational prayer becomes too difficult to perform, nevertheless one is able to perform the (obligatory) actions of the prayer, such as standing, bowing (*Rukū'*),

⁶²⁵ *Sūrah at-Taghābun* (64):16. Ibn al-‘Uthaymīn refers to this principle in his *Mandhūmah Uṣūl al-Fiqh* (p.21) as, “And do whatever you are able to of that which is ordered,” (وما استطعت افعل من المأمور)

prostrating, and *Khushū*'.⁶²⁶ It is *Wājib* to perform the (complete) prayer individually, and not permissible to perform it on foot (i.e. walking) or riding without a need.

Thirdly, in the instance of an inability to perform the complete prayer along with its standing, bowing, and prostration, it should be performed whilst on foot or riding, and in this, there is no problem owing to the verse (2:239), as was held by *Imām Aḥmad* رَحِمَهُ اللهُ.⁶²⁷ He also ruled similarly in the case of the POW; if he fears he will be prevented from performing the prayer he can (pray by) gesture (i.e. nodding) as is apparent in the verse.”⁶²⁸

And the second and third levels may also be resorted to in the case that the mere congregating of *Mujāhidīn* for prayer may present unprecedented opportunities for the artillery and air strikes of the disbelievers. As if, as argued by scholars such as ibn al-Jawzī رَحِمَهُ اللهُ,⁶²⁹ and is apparent for the wording of the verses, the reason and wisdom (*‘Illah*) behind the legislation of the Fear Prayer is to protect the Muslims from enemy attack whilst they are in prayer. Then it may be performed in smaller groups or individually on the battlefield, defensive positions, bunkers, or manning crew-served weapons, if this cannot be achieved by performing the Fear Prayer in congregation. As ‘the ruling revolves around the presence or absence of the reason for issuing it.’⁶³⁰

In addition, it appears the opinion of shortening the prayer whether resident or travelling is the strongest, if it is indeed correct that the reason for shortening the prayer in length and

⁶²⁶ *Khushū* (الخشوع) is, according to ibn Qayyim, “The softness of the heart, its being gentle, still, submissive, broken, and yearning.” (*Humility in Prayer*, p.18)

⁶²⁷ Refer to *Masā'il 'Abdullāh* (p.132)

⁶²⁸ Refer to *Masā'il Ṣāliḥ* and *Tafsīr wa'l-Bayān li'Aḥkām al-Qur'ān* (1/499&500)

⁶²⁹ Refer to *Zād al-Masīr fī 'Ilm Tafsīr* (1/463)

⁶³⁰ In Arabic the principle is (الحكم يدور مع علته وجوداً وعدمًا)

form is due to fighting, or the fear of enemy attack. As the enemy's attack or threat of attack affect him in the same way regardless of if the believer is resident or travelling through the lands of the enemy. As such, the deciding factor is the level of threat present and the difficulty associated with performing the prayer completely, in congregation, and during its prescribed time, and Allāh ﷻ surely knows best.

Shaykh ‘Abd al-‘Azīz at-Ṭarīfī says in his *Tafsīr* (2/1016), “(If) the Muslims are not able to array themselves into rows, or a group, due to fear of the enemy targeting, and attacking them by fire,⁶³¹ then it has established in the two *Ṣaḥīḥ*’s from the *Ḥadīth* of ibn ‘Umar:

فَإِنْ كَانَ خَوْفٌ أَشَدُّ مِنْ ذَلِكَ صَلَّوْا رِجَالًا عَلَى أَقْدَامِهِمْ، أَوْ رُكْبَانًا مُسْتَقْبِلِي الْقِبْلَةِ أَوْ غَيْرَ مُسْتَقْبِلِيهَا. قَالَ نَافِعٌ: لَا أَرَى ابْنَ عُمَرَ ذَكَرَ ذَلِكَ إِلَّا عَنِ النَّبِيِّ ﷺ

‘If there is extreme fear, pray on foot, riding, facing the *Qiblah* or otherwise.’ Nāfi’ commented, ‘I do not think ibn ‘Umar (would have) narrated that except from the Prophet ﷺ.’

The description of the prayer performed by gesturing whilst walking or riding, is as has been narrated by ibn ‘Umar when he said:

إِذَا اخْتَلَطُوا فَإِنَّمَا هُوَ الذِّكْرُ وَإِشَارَةُ الرَّأْسِ

‘If the (two armies) intermingle (i.e. engage in close quarters combat), then (the prayer) is only remembrance and gesturing with the head (i.e. nodding).’⁶³²

⁶³¹ *Fires* are the effects of lethal or nonlethal weapons

⁶³² Al-Bayhaqī, *Sunan al-Kubrā* (6022). Al-Bayhaqī also reports it with a slightly different wording (6021):

According to at-Ṭarīfī (2/1018&1019) there are no authentic narrations tracing back to the Prophet ﷺ (*Marfū'*)⁶³³ or to the Companions (*Mawqūf*)⁶³⁴ detailing the number of *Rak'āt* for the *Maghrib* Fear Prayer. As such, some of the Successors (*at-Tābi'in*) mentioned three *Rak'āt*, while others mentioned two, and others mentioned only one *Rak'ah*. Yet others, such as Sa'īd ibn Jubayr رَحِمَهُ اللهُ held that the *Tasbīh*, *Tahmūd*, *Tahlīl*,⁶³⁵ and *Takbīr* are sufficient during situations of intense combat wherein one loses track of time. They said:

فَتِلْكَ صَلَاتُكَ ثُمَّ لَا تُعَدُّ

“That is your prayer, and there is no need to repeat it (later).”⁶³⁶

قَالَ ابْنُ جُرَيْجٍ، حَدَّثَنِي مُوسَى بْنُ عُقْبَةَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ بِمِثْلِ قَوْلِ مُجَاهِدٍ: "إِذَا اخْتَلَطُوا فَإِنَّمَا هُوَ التَّكْبِيرُ وَالْإِشَارَةُ بِالرَّأْسِ"، وَزَادَ عَنِ النَّبِيِّ ﷺ: "فَإِنْ كَثُرُوا فَلْيُصَلُّوا رُكْبَانًا أَوْ قِيَامًا عَلَى أَقْدَامِهِمْ".

“If the (two armies) intermingle (i.e. engage in close quarters combat), then (the prayer) is only *Takbīr* and gesturing with the head (i.e. nodding).”

⁶³³ (المرفوع) The narration in which the *Isnād* (chain of narration) ends with the Prophet ﷺ. It does not specifically denote however whether the narration is *Ṣaḥīḥ* (authentic) or *Da'īf* (weak)

⁶³⁴ (الموقوف) The narration in which the *Isnād* (chain of narration) ends with a *Ṣaḥābī* (Companion of the Prophet ﷺ). Like the *Marfū'*, it does not specifically denote however whether the narration is *Ṣaḥīḥ* (authentic) or *Da'īf* (weak)

⁶³⁵ *Tasbīh* (التسبيح) is to say “*Subḥānallāh*,” (سبحان الله) meaning, ‘exalted is Allāh above every imperfection.’ *Tahmūd* (التحمود) is to say “*Alḥamdulillāh*,” (الحمد لله) meaning, all praise is due to Allāh. *Tahlīl* (التهليل) is to exclaim “*Lā ilāha illā 'llāh*,” (لا إله إلا الله) meaning, there is no deity worthy of worship besides Allāh

⁶³⁶ *Muṣannaf ibn Abī Shaybah* (8260). The full narration is as follows:

حَدَّثَنَا أَبُو بَكْرِ قَالَ: ثنا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ، عَنْ عَطَاءٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَأَبِي الْبَخْتَرِيِّ، قَالَ: أَظُنُّ فِيهِ وَأَصْحَابِهِمْ، قَالُوا: "إِذَا التَّقَى الرَّحْفَانِ، وَضَرَبَ النَّاسُ بَعْضُهُمْ بَعْضًا، وَحَضَرَتِ الصَّلَاةُ، فَقُلْ: سُبْحَانَ اللَّهِ، وَالْحَمْدُ لِلَّهِ، وَلَا إِلَهَ إِلَّا اللَّهُ، وَاللَّهُ أَكْبَرُ، فَتِلْكَ صَلَاتُكَ، ثُمَّ لَا تُعَدُّ"

In conclusion, the scholars holding that all of the differing variations of the Fear Prayer performed by the Prophet ﷺ are permissible means that they can all be acted upon according to the tactical situation the believer finds himself in. Nevertheless, it does not mean that the believer is at liberty to invent his own version of the Fear Prayer, reasoning that the ends (i.e. the preservation of the believers' lives) justify the means. Accordingly, the Fear Prayer must be performed in the same way as the Prophet ﷺ and his Companions رَضِيَ اللَّهُ عَنْهُمْ performed it, in conformance with his command:

صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي

“Pray as you have seen me praying.”⁶³⁷

He likewise warned the believers against innovating in the religion, saying:

مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ

“Whoever innovates something in this affair of ours (i.e. Islām) which does not belong to it will have it rejected.”⁶³⁸

He ﷺ also said, warning against the following of innovations:

مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ

Sa’īd ibn Jubayr and Abī al-Bukhtarī said, “If the two armies meet, the people clash, and the time for prayer enters, say: *Subhānallāh, Alḥamdulillāh, Lā ilāha illā ‘llāh*, and *Allāhu Akbar*. That is your prayer, and there is no need to repeat it (later).”

⁶³⁷ *Ṣaḥīḥ al-Bukhārī: The Book of the Call to the Prayer* (631) and *Ṣaḥīḥ Muslim: The Book of Mosques and the Places of Prayer* (674)

⁶³⁸ *Ṣaḥīḥ al-Bukhārī: The Book of Treaties* (2697) and *Ṣaḥīḥ Muslim: The Book of Judgements* (1718)

*“Whoever performs an act not in accordance with this affair of ours (i.e. Islām) will have it rejected.”*⁶³⁹

⁶³⁹ *Ṣaḥīḥ Muslim: The Book of Judgements* (1718). What is intended here is, that while the believer may be constrained and compelled by his circumstances to perform the prayer in other than one of the methods mentioned in the narrations, whilst fearing Allāh as much as he is able. He is not allowed to make this into a new *Sunnah*, or regard it as a new variation of the Fear Prayer, to be replicated when the possibility to follow the Prophetic *Sunnah* exists - and Allāh knows best.

CHAPTER SUMMARY

The Fear Prayer is, “The obligatory prayer performed during its time, while the Muslims are engaged in combat with the enemy, or are standing guard against them.” It is performed when the believer is in a state of fear usually, although not exclusively, due to enemy presence in the vicinity.

It has different forms and is performed in whatever direction and form is most appropriate in achieving its aims of safeguarding the obligatory prayer and protecting those praying from an imminent threat.

Allāh ﷻ has commanded the believers to take precautions during this prayer, and carry their weapons, unless this would pose considerable harm or difficulty, such as in the case of those with significant injuries.

According to Allāh’s order to fear Him as much as possible, It is obligatory to adhere to progressive levels when performing the Fear Prayer. As such:

- 1) Whoever is able to perform the complete Fear Prayer in congregation must do so.
- 2) If the congregational prayer becomes too difficult to perform, nevertheless one is able to perform the (obligatory) actions of the prayer, such as standing, bowing (*Rukū’*), prostrating, and *Khushū’*. It is *Wājib* to perform the (complete) prayer individually.
- 3) in the instance of an inability to perform the complete prayer along with its standing, bowing, and prostration individually, it should be performed whilst on foot or riding, even if this can only be achieved by gesturing, and

- 4) If this is not possible, then, according to some scholars, the prayer may be delayed until the situation permits the believer to perform the prayer according to one of the above methods.

CHAPTER 26

الحكم الإستعانة بالكفار في قتال العدو

THE RULING ON SEEKING ASSISTANCE FROM THE DISBELIEVERS IN FIGHTING THE ENEMY

The scholars, both past and present, have differed concerning seeking assistance from the disbelievers for the purposes of *Jihād*.

The ‘enemy’ (i.e. those the Muslims are fighting) in this chapter will be divided into two groups:

- Disbelievers and apostates
- Other Muslims

الحكم الإستعانة بالكفار فى قتال الكفار

THE RULING ON SEEKING ASSISTANCE FROM THE DISBELIEVERS IN FIGHTING OTHER DISBELIEVERS

This section does not cover the issue of *Jihādī* groups requesting or being offered 'support' and assistance from the disbelievers. Leading to them becoming totally dependent, recognising the authority, abiding by the conditions, and generally following the orders and doing the bidding of their disbelieving 'supporters'. As this case renders those receiving 'support' as agents, proxies, and mercenaries for their employers and as such they, as a group,⁶⁴⁰ take the same ruling as those who are controlling them - that of disbelief - as they have become the soldiers, and an integral part of the armed forces of the disbelievers.

Nevertheless, it will discuss - by the permission of Allāh ﷻ - the issue of the *Mujāhidīn* or groups from amongst them seeking (or accepting) financial, material, or other forms or support (in their *Jihād*) from the disbelievers. In doing so, the believing entity remains independent of the disbelievers in terms of her leadership and decision-making processes.

Scholars hold three positions with regard to its permissibility:

- 1) It is permissible with conditions
- 2) It is permissible only in situations of dire necessity (*Ḍurūrah*)

⁶⁴⁰ Nevertheless, their individual ruling may not necessarily be that of disbelief. Meaning that as individuals, their cases are to be examined in order to determine whether they have fulfilled all of the conditions required to exit them from the fold of Islām, and likewise, all of the impediments of *Takfīr* have been exhausted (i.e. they have none). However, if encountered by the believers during combat, questions need not be asked, as they take the ruling of their group and are dealt with accordingly.

3) It is not permissible in any situation

The majority of scholars deemed permissible seeking aid from the disbelievers in war, with some arguing that the Prophet ﷺ forbade the disbelievers mentioned in the upcoming narrations in order to encourage them to embrace Islām. Others argue that, while the forbiddance of seeking the disbelievers aid is the default, Allāh later granted a concession (*Rukhṣah*) to the Prophet ﷺ. *Al-Hāfidh* رَحْمَةُ اللَّهِ said in *at-Talkhīṣ*, “And this seems closest to the truth, and there is a statement from ash-Shāfi’ī to this effect.”⁶⁴¹

They rely on the following narrations for evidence of its permissibility:

Abū Dāwūd رَحْمَةُ اللَّهِ reports in his *Sunan: The Book of Sales Transactions* (3562) that Umayyah ibn Ṣafwān ibn Umayyah narrated from his father رَحْمَةُ اللَّهِ عَنْهُمَا:

عَنْ أُمَيَّةَ بْنِ صَفْوَانَ بْنِ أُمَيَّةَ، عَنْ أَبِيهِ، أَنَّ رَسُولَ اللَّهِ ﷺ اسْتَعَارَ مِنْهُ
أَدْرَاعًا يَوْمَ حُنَيْنٍ فَقَالَ: أَغْصَبْتُ يَا مُحَمَّدُ، فَقَالَ: «لَا، بَلْ عَمَقُ
مَضْمُونَةٍ»

“On the day of (the battle of) Ḥunayn the Messenger of Allāh ﷺ took some armour from him (i.e. Ṣafwān ibn Umayyah). So he said, ‘O Muḥammad, are you seizing them by force?’ (The Messenger of Allāh ﷺ) replied, ‘No, rather they are a loan with guarantee.’”

Also in *Sunan Abī Dāwūd: The Book of al-Malāḥim* (4292) Jubayr رَحْمَةُ اللَّهِ عَنْهُ narrates that the Prophet ﷺ said:

⁶⁴¹ *Nayl al-Awṭār* (7/264), also refer to *al-Mughnī* (8/529) (7068), *Subul as-Salām: Kitāb al-Jihād* (2/1047), and others

سَتُصَالِحُونَ الرُّومَ صُلْحًا آمِنًا، فَتَغْزُونَ أُنْتُمْ وَهُمْ عَدُوًّا مِنْ وَرَائِكُمْ

“You will make a peace treaty with the Romans, and then both fight an enemy from behind you.”

From the scholars that permit seeking assistance from the disbelievers against other disbelievers, most only permit it conditionally, meaning that it is impermissible unless a number of conditions are met.

The following are a summary of the conditions they have set:

1) *The rule of Islām should be dominant, with the disbelievers being subservient to it*

Al-Qurṭubī رحمه الله says in his *Tafsīr* (4/445), “Abū Ḥanīfah, ash-Shāfi’ī, ath-Thawrī, and al-Awzā’ī said that there is no problem in it as long as the rule (*Hukm*) of Islām is dominant. While they only prohibited it if the rule of *Shirk* was dominant.”

In *Sharḥ as-Siyar al-Kabīr* (1/1422) it states, “There is no problem with the Muslims seeking the help of the disbelievers against the disbelievers if the ruling (and judgement) of Islām is dominant (i.e. enforced) upon them.”

Imām Abū Bakr al-Jaṣṣāṣ رحمه الله says in *Aḥkām al-Qur’ān* (2/559), “It is permissible to seek the assistance of the disbelievers in fighting other disbelievers; and likewise our companions said that if victory was secured, the rule of Islām would be imposed upon them, and there is no authority for the rule of disbelief.” He also said (2/361), “Seeking the assistance of the disbelievers is not permissible, if when victory arrives, the dominance will be for the disbelievers and their rule is the one that prevails.”

In *Nayl al-Awṭār* (7/264&265) ash-Shawkānī رحمه الله states, “Some of the people of knowledge, such as al-Hādawīyyah, stipulated

that it is not permissible to seek the assistance of the disbelievers and rebellious (*al-Fussāq*) except with the *Imām* of a group of the Muslims who imposes upon them the rulings of the *Shar'iyah*. So they will not be from those who have conquered, but rather will be those that have been overcome (i.e. by the *Sharī'ah*).”

2) The disbelievers do not fight under their own independent banner, rather they are under the banner of the Muslims

In *Sharḥ as-Siyar al-Kabīr* (1/422&423), “It is reported that on the day of Uḥud the Prophet ﷺ saw the Ḥasnā’ battalion⁶⁴² and asked, ‘Who are they?’ So it was said, ‘(They are the) Jews from such-and-such tribe, the allies of ibn Ubay.’ So he said:

إِنَّا لَا نَسْتَعِينُ بِمَنْ لَيْسَ عَلَيَّ دِينِنَا

“Indeed we will not seek help from anyone not upon our religion.”

Interpreting this to mean, that they had force and would not (accept to) fight under the banner (i.e. authority) of the Prophet ﷺ, and according to us this means that if they possess this characteristic (i.e. independence owing to their size or strength) it is detested to seek help from them.”

⁶⁴² Scholars differ regarding the name (i.e. the spelling) of this group. Some record it as *al-Ḥasnā’*, while others record it as *al-Khasnā’*. These types of variations in spellings are not unknown to the scholars, with some devoting entire chapters to this phenomenon in their books on ‘*Ulūm al-Ḥadīth*’ (the sciences of *Ḥadīth*). In this particular example, the difference is attributable to the first letter of the word (الحسناء and الحسناء); three letters, except for the placement of the *Nuqṭah* (dot), or absence thereof, share the form of which. In the era of the Companions, the Arabic language was written without the presence of *Nuqṭat* (dots) or *Tashākīl* (markings for vowels, e.g. َ ِ ُ َ ِ ُ َ ِ ُ َ ِ ُ), thus if unaccompanied by the verbal pronunciation, there were a number of words (especially names) that could be confused

Ash-Sharkhasī رَحِمَهُ اللهُ says similarly in *al-Mabsūt* (10/23&24), “And seeking their help is similar to seeking the help of dogs against them (i.e. the disbelievers) [...] and in our estimation, it is only allowed to seek their help if they are fighting under the banner of the Muslims. However, if they are separate and under their own banner, then it is not (allowed) to seek their assistance.”

Al-Karābīsī رَحِمَهُ اللهُ says in *al-Furūq* (1/319-321), “It is permitted for the Muslims to seek the help of the *Ahl adh-Dhimmah* against the disbelievers if they (i.e. *Ahl adh-Dhimmah*) do not possess might (*Shawkah*), but if they do it is not permissible. And the condition concerning their assimilation (into the Muslims forces) is that they are under our dominance and rule, so if they are few in number they will be under our authority. Thus, in the Muslims seeking of their support it will not harm the Muslims, and in such a case it is permissible. However, it is not like this if they possess might, due to the possibility of them not being under our authority and there being no guarantee they will not turn against us, and manifest their religion (i.e. spread their disbelief throughout the land). Accordingly, if the Muslims are not secure from their harm they are not allowed to seek their help. And the foundation of the matter is what is well-known to be from the Prophet ﷺ when he said:

إِنَّا لَا نَسْتَعِينُ بِالْكَفَّارِ

“We will certainly not seek the assistance of the disbelievers,” when he saw the *Hasnā’* battalion,⁶⁴³ and what was reported from him that he sought the assistance of some of the Jews of Banī Qaynuqā’ when he saw that they were only few in number.”⁶⁴⁴

⁶⁴³ Meaning that they were well armed. Refer to *al-Mawrud al-‘Uthb* (p.50)

⁶⁴⁴ It must be noted that the alleged incident wherein the Prophet ﷺ sought the assistance of some of the Jews of Banī Qaynuqā’ when he saw that they were only few in number, is not authentically attributed to him ﷺ. The

This condition seeks to ensure that the disbelievers where help has been sought have no independence. Thus, they are not in the position to disobey orders, employ their own institutes, or group together to conspire against the Muslims or their interests.

3) A genuine need exists for seeking their assistance⁶⁴⁵

In *al-Baḥr ar-Rā'iq* (5/97) ibn Najīm al-Ḥanafī رحمہ اللہ says, “And their speech indicates that it is permissible to seek the assistance of the disbelievers in war if there exists a need for it.”

Ibn Humām رحمہ اللہ says in *Sharḥ Faṭḥ al-Qadīr* (5/502), “Is it permissible to seek the help of the disbelievers? According to us, it is permissible only if there exists a need, and this was the opinion of ash-Shāfi’ī رحمہ اللہ.”

Accordingly, if there is no need for seeking the disbelievers assistance, it is not allowed due to the unavoidable harm it entails from them being exposed to the Muslims military affairs, secrets, locations, leaders, etc, etc.

4) It is known that they hold a good opinion about the Muslims

This condition seeks to lessen the potential for treachery on the part of the disbelievers, as if they have a good opinion and genuinely like or respect the Muslims, they are less likely to betray them, and Allāh knows best.

reasoning behind the Prophet ﷺ not seeking their assistance, according to those that use this as evidence, is that they were a large and a well-armed force having the potential to harm the Muslims should they prove treacherous.

⁶⁴⁵ A need (حاجة) is not to be confused with the necessity (ضرورة). As the necessity permits the *Ḥarām* (impermissible), while the need only permits the *Makrūh* (disliked). Meaning, it changes the ruling from an act that is originally *Makrūh* to being *Mubāḥ*.

An-Nawawī رَحِمَهُ اللهُ says in *Rawḍah at-Tālibīn* (10/239), “It is permissible to seek the assistance of the *Ahl adh-Dhimmah* and polytheists in *Ghazū* (i.e. offensive *Jihād*) on the condition that the *Imām* knows they hold a good opinion about the Muslims...” He likewise says in his commentary on *Ṣaḥīḥ Muslim* (4/1921), “Ash-Shāfi’ī and a number of others say that if the disbeliever has a good opinion about the Muslims and there exists a need to seek his assistance, then do so, otherwise it is detested.”

In *al-Kāfi fī Fiqh al-Imām Aḥmad* (4/263&264) ibn Qudāmah رَحِمَهُ اللهُ states, “It is not permissible, according to the authentic narration in which ‘Ā’ishah رَضِيَ اللهُ عَنْهَا narrated that when the Prophet ﷺ marched to Badr a polytheist followed him, so he asked him, ‘Do you believe in Allāh and His Messenger?’ He replied, ‘No.’ So he said:

فَارْجِعْ فَلَنْ نَسْتَعِينُ بِمُشْرِكٍ

‘Go back, for we will never seek the help of any polytheist.’⁶⁴⁶

However, if there exists a need for him, but he does not hold a good opinion about the Muslims, his help is also not to be sought due to the fear of his harm outweighing the hope of his benefit. Although if he has a good opinion regarding the Muslims it is permissible, due to the fact that Ṣafwān ibn Umayyah attended Ḥunayn along with the Messenger of Allāh ﷺ while he was still a polytheist.”

He رَحِمَهُ اللهُ also says in *al-Mughnī* (9/257), “It is stipulated that whoever the assistance is sought from, have a good opinion about the Muslims. However if they (i.e. the Muslims) are not safe from him it is not permissible to seek his assistance. As if we prohibit seeking the help of those Muslims we are not safe

⁶⁴⁶ According to the principle, ‘The indefinite in the context of negation generalises (نَكْرَةُ فِي سِيَاقِ النِّفْيِ تُفِيدُ الْعُمُومَ),’ the word ‘polytheist’ in the narration is general, encompassing all polytheists, except those specified by evidence

from, such as the *Mukhadhil* and the *Murjif*,⁶⁴⁷ it is even more imperative that the disbeliever (is prevented from accompanying the Muslims in battle due to an even greater harm emanating from his disbelief).”⁶⁴⁸

5) *The Disbelievers whose help is being sought are trustworthy*

This trustworthiness takes two forms: (1) The disbelievers are trustworthy in the sense that they abide by their word, do not break their promises or betray, and they would not reveal the secrets of the Muslims to their disbelieving brothers. (2) Their information is reliable, which is of crucial importance when they are tasked to collect and convey information regarding the enemy forces and terrain to the Muslims. As this information will likely inform the Muslims’ subsequent courses of action, potentially putting lives at risk. And if one requires evidence regarding the disastrous consequences of having untrustworthy sources of intelligence, look no further than the 2003 Iraq invasion and Saddam’s stockpiled weapons of mass destruction (WMDs).

Ibn Qayyim رحمه الله says in *Zād al-Ma’ād* (2/126) while speaking about the *Fiqhī* benefits derived from the story of al-Ḥudaybiyyah, “It is permissible to seek help from a trustworthy polytheist when the need arises. Because ‘Uyaynah al-Khuzā’ī was a disbeliever at that time, and in it was a benefit due to him being most suitable to infiltrate the enemy and uncover their secrets.”⁶⁴⁹

⁶⁴⁷ Refer to Chapter 27 (pgs.603&604) for a description of the *Mukhadhil* and *Murjif*

⁶⁴⁸ *Al-Mughnī* (7508)

⁶⁴⁹ Ibn Qayyim is referring to when the Prophet ﷺ was at Dhul-Ḥulayfah on the occasion of the treaty of Ḥudaybiyyah and sent ‘Uyaynah al-Khuzā’ī as a spy to bring back news of the Quraysh. Other scholars have named Bishr ibn Sufyān al-Ka’bī al-Khuzā’ī as the spy the Prophet ﷺ employed during this mission. Refer to *The Noble life of the Prophet ﷺ* (3/1489-1492) and *Provisions for the Hereafter* (p.381). It should be noted that a number of scholars, such as ibn ‘Abd al-Barr, considered that Bishr (or Bishr) was a

6) *The Muslims are safe from their treachery*

An-Nawawī رحمه الله says in *Rawḍah at-Ṭālibīn* (10/239), “It is permissible to seek the assistance of the *Ahl adh-Dhimma* and polytheists in *Ghazū* (i.e. offensive *Jihād*) on the condition that the *Imām* knows they hold a good opinion about the Muslims, and he is safe from their treachery.”

Imām al-Māwardī رحمه الله says in *Hāwī al-Kabīr* (14/132), “If the permissibility of seeking help from them is established, then it should be according to three conditions: Firstly, that the Muslims should be in need of them, and if this is not the case it is not permissible. Secondly, that the Muslims should be safe from them (i.e. their harm or treachery) and hold a good opinion about them. However, if the Muslims fear (from them) it is not allowed.”

In *Mashāri’ al-Ashwāq* (p.1030) ibn an-Nuḥḥās رحمه الله said, “It is permissible to seek the assistance of the disbelievers in war with two conditions: The first is that (the Muslims) are safe from the disbelievers’ treachery...”

7) *The Muslims are capable of warding off their harm should they prove treacherous*

An-Nawawī رحمه الله says in *Rawḍah at-Ṭālibīn* (10/239), “*Imām* al-Baghawī and others (also) stipulate a third condition that the Muslims are greater in number than them, and as such if they betray their pact and join forces with those the Muslims are attacking, we have the ability to resist all of them.”

In *Mashāri’ al-Ashwāq* (p.1030) ibn an-Nuḥḥās رحمه الله said, “It is permissible to seek the assistance of the disbelievers in war with two conditions: [...] the second is that if they were to prove

Muslim by the time the above mission took place. Refer to *al-Mawrud al-Athb* (pgs.57&58)

treacherous and joined with the disbelievers (being fought) then we would be able to resist (all) of them.”

The importance of this condition is emphasised in Allāh’s words (9:8):

﴿وَكَثُرُهُمْ فَاسِقُونَ﴾

and most of them are defiantly disobedient

Meaning, that most of them do not respect any covenants, treaties, and promises they make. In addition, the statements of the scholars regarding this condition appear to indicate the help sought here is restricted to expertise and its likes. If this were not the case, then what would have been the point for stipulating this condition in the first place, as the Muslims would not have any need to enlist the help of the disbelievers?

8) *The disbelievers should have a different religion to those against whom their help is being sought*

Imām al-Māwardī رَحِمَهُ اللهُ says in *Hāwī al-Kabīr* (14/132), “If the permissibility of seeking help from them is established, then it should be according to three conditions: [...]. Thirdly, they (i.e. the disbelievers) should have differing religions (from those disbelievers they are helping the Muslims against), such as the Jews with (i.e. against) the Christians or idolaters. But if they share the same religion it is not permissible.”

However, Shaykh Abū Yaḥyā al-Lībī رَحِمَهُ اللهُ argues, “What appears apparent to me is that the intent of condition stipulated by *Imām al-Māwardī* رَحِمَهُ اللهُ is not merely a difference of belief. Rather, there must exist a strong indication of enmity between them being the reason they are willing to march forth and fight (against the other group of disbelievers), such as what is known today as a ‘conflict of interests.’ Nevertheless, it is a must that

this matter is fully apparent and is really the case, a not just due to (the believers') imagination and assumption.”⁶⁵⁰

To elaborate further, the believers are reminded of a number of contemporary examples highlighting a mere difference in religion is rarely enough to prevent cooperation against Muslims. As such, the US and the criminals occupying Palestine do not share the same religion. Neither do the Russians, the Iranians, and Assad regime. Neither do the AMISTOM forces and the Somali regime. Neither do the PKK and the US. Neither do Chinese and the Indians, and so on. Indeed, Allāh ﷻ does not distinguish between different disbelievers, stating in *Sūrah al-Anfāl* (8:73):

﴿وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ﴾

And those who disbelieved are allies of one another.

On the other hand, those scholars that hold seeking the assistance of the disbelievers impermissible do so due to Allāh's ﷻ words in numerous places throughout the noble Qur'ān. Amongst these instances are His words in *Sūrah Āl Imrān* (3:28):

﴿لَا يَتَّخِذِ الْمُؤْمِنُونَ الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ وَمَنْ يَفْعَلْ ذَلِكَ فَلَيْسَ مِنَ اللَّهِ فِي شَيْءٍ إِلَّا أَنْ تَتَّقُوا مِنْهُمْ تُقَاتُوا ۗ وَيَحْذَرُ اللَّهُ النَّفْسَ الْفَاسِقَ ۖ وَاللَّهُ الْمَصِيرُ﴾

Let not believers take disbelievers as allies [i.e., supporters or protectors] rather than believers. And whoever [of you] does that has nothing [i.e., no association] with Allāh, except when taking

⁶⁵⁰ al-Mawrud al- 'Uthb (pgs.21&22)

precaution against them in prudence. And Allāh warns you of Himself, and to Allāh is the [final] destination.

Al-Alūsī رَحِمَهُ اللَّهُ said regarding the verse in *Rūḥ al-Ma'ānī* (2/116), “As some hold, this ‘alliance’ encompasses seeking their assistance during expeditions (i.e. battles, etc.)” A number of the *Mufasssīrīn* (scholars of *Tafsīr*), such as al-Alūsī and al-Qurṭubī رَحِمَهُمَا اللَّهُ, comment that the reason for the revelation of this verse was what has been narrated from ibn ‘Abbās رَضِيَ اللَّهُ عَنْهُ: “It was revealed regarding ‘Ubādah ibn aṣ-Ṣāmit al-Anṣārī, who was one of the chiefs at Badr, when he approached the Prophet ﷺ on the day of *al-Aḥzāb* along with five hundred of his (former) allies from the Jews. He said, ‘O Prophet of Allāh, I have with me five hundred men from the Jews, whom I thought could be used against the enemy.’ Thereupon Allāh the Exalted revealed the verse, ***Let not believers take disbelievers as allies...***”⁶⁵¹

In *Sūrah al-Mā'idah* (5:57) He ﷻ says:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَتَّخِذُوا الَّذِينَ اتَّخَذُوا دِينَكُمْ هُزُوًا وَلَعِبًا
مِّنَ الَّذِينَ أُوتُوا الْكِتَابَ مِن قَبْلِكُمْ وَالْكَفَّارَ أَوْلِيَاءَ وَاتَّقُوا اللَّهَ إِنَّ كُتُوبَهُ
مُؤْمِنِينَ ﴿٥٧﴾﴾

O you who have believed, take not those who have taken your religion in ridicule and amusement among the ones who were given the Scripture before you nor the disbelievers as allies. And fear Allāh, if you should [truly] be believers.

⁶⁵¹ Refer to *Rūḥ al-Ma'ānī* (3/120) and *Jāmi' li' Ahkām al-Qur'ān* (3/572)

Al-Imām Abū Bakr al-Jaṣṣāṣ رَحِمَهُ اللهُ said in his *Tafsīr* (4/104), “It is prohibited from seeking victory through the polytheists as (then you would be taking them as) **allies**.”

He ﷺ says in *Sūrah al-Mumtaḥinah* (60:1-2):

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَتَّخِذُوا عَدُوِّي وَعَدُوَّكُمْ أَوْلِيَاءَ تُلْقُونَ إِلَيْهِمْ
بِالْمُودَّةِ وَقَدْ كَفَرُوا بِمَا جَاءَكُمْ مِنَ الْحَقِّ يُخْرِجُونَ الرَّسُولَ وَإِيَّاكُمْ أَنْ تُؤْمِنُوا
بِاللَّهِ رَبِّكُمْ إِنْ كُنْتُمْ خَرَجْتُمْ جِهَادًا فِي سَبِيلِي وَابْتِغَاءَ مَرْضَاتِي تُسِرُّونَ إِلَيْهِمْ
بِالْمُودَّةِ وَأَنَا أَعْلَمُ بِمَا أَخْفَيْتُمْ وَمَا أَعْلَنْتُمْ وَمَنْ يَفْعَلْهُ مِنْكُمْ فَقَدْ ضَلَّ
سَوَاءَ السَّبِيلِ ۝ إِن يَثْقَفُوكُمْ يَكُونُوا لَكُمْ أَعْدَاءً وَيَبْسُطُوا إِلَيْكُمْ أَيْدِيَهُمْ
وَالسِّنَنَ ۚ وَالسُّوءُ وَوَدُّوا لَوْ تَكْفُرُونَ ۝﴾

O you who have believed, do not take My enemies and your enemies as allies, extending to them affection while they have disbelieved in what came to you of the truth, having driven out the Prophet and yourselves [only] because you believe in Allāh, your Lord. If you have come out for Jihād [i.e., fighting or striving] in My cause and seeking means to My approval, [take them not as friends]. You confide to them affection [i.e., instruction], but I am most knowing of what you have concealed and what you have declared. And whoever does it among you has certainly strayed from the soundness of the way.

If they gain dominance over you, they would be [i.e., behave] to you as enemies and extend against you their hands and their tongues with evil, and they wish you would disbelieve.

In *Sūrah at-Tawbah* (9:23):

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَتَّخِذُوا ءَابَاءَكُمْ وَءِخْوَانَكُمْ
أَوْلِيَاءَ إِنِ اسْتَحَبُّوا الْكُفْرَ عَلَى الْإِيمَانِ وَمَن يَتَوَلَّهُمْ مِّنكُمْ
فَأُولَٰئِكَ هُمُ الظَّالِمُونَ﴾

O you who have believed, do not take your fathers or your brothers as allies if they have preferred disbelief over belief. And whoever does so among you - then it is those who are the wrongdoers.

And in *Sūrah Āl ‘Imrān* (3:118) He ﷺ says:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَتَّخِذُوا بَطَانَةَ مِن دُونِكُمْ لَا يَأْتُونَكُمْ
خَبْرًا وَلَا يُدَوُّوْنَ مَا عَنْتُمْ قَدْ بَدَتْ الْبَغْضَاءُ مِن أَفْوَاهِهِمْ وَمَا تُخْفِي
صُدُورُهُمْ أَكْبَرُ قَدْ بَيَّنَّا لَكُمُ الْآيَاتِ إِن كُنْتُمْ تَعْقِلُونَ﴾

O you who have believed, do not take as intimates those other than yourselves, [i.e., believers], for they will not spare you [any] ruin. They wish you would have hardship. Hatred has already appeared from their mouths, and what their breasts conceal is greater. We have certainly made clear to you the signs, if you will use reason.

Ibn Muflīh رحمه الله said in *Ādāb ash-Shar‘iyyah* (3/79), “Al-Qāḍī Abū Ya’lā said, ‘In this verse is evidence prohibiting seeking the assistance of the *Ahl adh-Dhimmah* in matters pertaining to the Muslims, such as their interactions between each other and acting as scribes. Due to this, *Imām Aḥmad* رحمه الله said that the *Imām* should not seek the assistance of the *Ahl adh-Dhimmah* for the purposes of war against the *Ahl al-Ḥarb*.’”

Accordingly, *Shaykh al-Islām* ibn Taymiyyah stated in *Iqtidā' as-Ṣirāṭ al-Mustaqīm* (p.184&185), “And due to this the *Salaf* رَضِيَ اللَّهُ عَنْهُمْ used these verse as evidence for abandoning seeking their help in matters of governance. As such, *Imām* Aḥmad reported with an authentic chain of narration from Abī Mūsā al-Ash'arī رَضِيَ اللَّهُ عَنْهُ that the latter said, ‘I said to ‘Umar رَضِيَ اللَّهُ عَنْهُ that I have a Christian scribe, so he said, ‘May Allāh kill you! What is wrong with you? Have you not heard Allāh saying:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا الْيَهُودَ وَالنَّصَارَىٰ أَوْلِيَاءَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ﴾

O you who have believed, do not take the Jews and the Christians as allies. They are [in fact] allies of one another.⁶⁵²

Why did you not take a believer (instead)?’ I said, O *Amīr al-Mu'minīn*, for me is his writing and for him is his religion. ‘Umar said, ‘Do not esteem them when Allāh has scorned them, do not honour them when Allāh has disgraced them, and do not bring them near when Allāh has distanced them.’”⁶⁵³

As such, many of the past the scholars held that seeking the disbelievers' assistance is in direct breach of Allāh's prohibition of taking them as *Awliyā'* (allies). Likewise, the words of the Prophet ﷺ are also explicit in this regard. He ﷺ stated on the day of Badr:

فَلَنْ أَسْتَعِينَ بِمُشْرِكٍ

“I will never seek the assistance of a polytheist.”⁶⁵⁴

While in another narration, he said ﷺ:

⁶⁵² *Sūrah al-Mā'idah* (5):51

⁶⁵³ Also in *Majmū' al-Fatāwā* (25/326&327) and ad-Dimyāṭī's *Aḥkām Ahl adh-Dhimmah* (pp.156-165)

⁶⁵⁴ *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1817)

فَإِنَّا لَا نَسْتَعِينُ بِالْمُشْرِكِينَ عَلَى الْمُشْرِكِينَ

“We will certainly not seek the assistance of the polytheists against the polytheists.”⁶⁵⁵

Owing to these verses and (authentic) narrations, and other than them, these scholars held that, since the narrations that appear to permit seeking the help of the disbelievers are not authentic and thus cannot be relied upon for proof, *al-Isti'ānah* (i.e seeking their help) is not permissible.

Although a number of scholars held that in situations of *Ḍurūrah* (necessity) it becomes permissible according to the principle of *Fiqh*, ‘Necessity permits the impermissible.’⁶⁵⁶

Indeed Allāh ﷻ outlines this principle with His noble words:

﴿فَمَنْ أَضْطَرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ﴾

⁶⁵⁵ Muṣannaḥ ibn Abī Shaybah: *Kitāb as-Siyar* (33159), *Musnad Aḥmad* (15763), *al-Mustadrak* (2563), and authenticated by al-Albānī in *Ṣaḥīḥ wa Ḍa'īf al-Jāmi'* (4056). The full text of the *Ḥadīth* is:

حَدَّثَنَا يَرْيَدُ بْنُ هَارُونَ، قَالَ أَخْبَرَنَا مُسْلِمُ بْنُ سَعِيدٍ، قَالَ ثنا حَبِيبُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ حَبِيبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: " خَرَجَ رَسُولُ اللَّهِ ﷺ يُرِيدُ وَجْهًا، فَأَتَيْتُهُ أَنَا وَرَجُلٌ مِنْ قَوْمِي، فَقُلْنَا: إِنْ شَهِدَ قَوْمُنَا مَشْهَدًا لَا نَشْهَدُهُ مَعَهُمْ، قَالَ: «أَسَلَمْتُمَا؟» قُلْنَا: لَا، قَالَ: «فَإِنَّا لَا نَسْتَعِينُ بِالْمُشْرِكِينَ عَلَى الْمُشْرِكِينَ» قَالَ: فَأَسَلَمْنَا وَشَهِدْنَا مَعَهُ

Khabīb ibn ‘Abd ar-Raḥmān ibn Khabīb narrated from his father, who narrated from his grandfather, “The Messenger of Allāh ﷺ went out on an expedition. I and some men from my tribe went to him and said, ‘If are people are going to particplate (in battle) will we not participate in it along with them?’ He said, ‘Have you embraced Islām (yet)?’ We replied, ‘No.’ Then he said, ‘We will certainly not seek the assistance of the polytheists against the polytheists.’”

⁶⁵⁶ In Arabic, this principle is (الضرورات تبيح المحظورات)

But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him.⁶⁵⁷

And:

﴿وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرَّرْتُمْ إِلَيْهِ﴾

He has explained in detail to you what He has forbidden you, excepting that to which you are compelled.⁶⁵⁸

Amongst the scholars who held this opinion were ibn al-Mundhir, ibn Ḥazm and al-Jūzjānī رَحِمَهُمُ اللَّهُ. Likewise, al-Bukhārī رَحِمَهُمُ اللَّهُ entitled a chapter in *Ṣaḥīḥ*, “Hiring the polytheists in situations of necessity or when there are no Muslims.” Notables from amongst the contemporary scholars were Ṣiddīq Ḥasan Khān and Abū Yaḥyā al-Lībī رَحِمَهُمُ اللَّهُ. In addition to the existence of a necessity, those holding this view did not disregard the conditions of those that permitted the issue. Rather, they restricted the issue further by insisting, in addition to the aforementioned stipulations, on the existence of a genuine necessity.

It must also be mentioned that the mere existence of a genuine necessity does not automatically permit the impermissible. Rather, a number of conditions must be fulfilled for this to take place. Such as:

- 1) Undertaking the prohibited act will actually alleviate the harm associated with the necessity.
- 2) There are no permissible means to alleviate the harm.
- 3) The prohibited act is less in evil (i.e. harm) than the harm one is seeking to avoid.

⁶⁵⁷ *Sūrah al-Baqarah* (2):173)

⁶⁵⁸ *Sūrah al-An'ām* (6):119

- 4) The harm is something certain, and not just a mere possibility.
- 5) The prohibited act is only done in accordance with the necessity and “does not exceed that which is required in order to alleviate the harm associated with the necessity,”⁶⁵⁹ as is indicated in Allāh’s ﷻ words:

﴿غَيْرُ بَاغٍ وَلَا عَادٍ﴾

neither desiring [it (i.e. to do the prohibited act)] nor transgressing [its limit]⁶⁶⁰

Al-Kasānī رَحِمَهُ اللَّهُ says in *Bidā'i' aṣ-Ṣanā'i'* (7/101), “It is not appropriate for the Muslims to seek the assistance of the disbelievers in fighting the disbelievers as they (i.e. the Muslims) are not safe from their treachery in the instance their animosity stemming from their religion stirs them (to betray the Muslims), except in the case of dire necessity.”

In *Kashshāf al-Qinā'* (3/63) al-Bahūtī رَحِمَهُ اللَّهُ says, “Seeking the aid of the disbelievers is *Harām*, except for situations of dire necessity due to the *Ḥadīth* of az-Zuhrī narrated by Sa'īd that the Prophet ﷺ sought the assistance of some of the polytheists in his war. Additionally, it was narrated that Ṣafwān ibn Umayyah witnessed (i.e. participated at) Ḥunayn along with the Prophet ﷺ. Consequently, the way in which the evidences may be reconciled is by (permitting it in only in situations of) dire necessity, such as if the disbelievers are (overwhelmingly) greater in number, or the Muslims fear from them (for some other reasonable explanation).”

Ṣiddīq Ḥasan Khān رَحِمَهُ اللَّهُ says in *al-'Ibrah* (pgs.18&19), “It is not allowed to seek the assistance of the disbelievers except for a

⁶⁵⁹ *Al-Qawā'id al-Fiqhiyyah* (p.120)

⁶⁶⁰ *Sūrah al-Baqarah* (2):173

dire necessity. A number of the scholars held that it is impermissible to seek the assistance of the polytheists, while others permitted it [...]. Therefore, the narrations concerning this issue can be reconciled by concluding that it is not permissible except in situations of dire necessity. However if this is not the case, then it is not permissible.”

There were a number of scholars however, that considered the issue an exception to the rule outlined in the above principle (of *Fiqh*). Grouping it instead with actions that are never permitted due to necessity because of the great evil they entail - such as disbelief, fornication, and murder. Meaning that *Isti'ānah* of the disbelievers never become permissible, regardless of the situation the believers are faced with. Aḥmad, according to one report, ash-Shawkānī in one of his statements, the majority of the Mālikī scholars, a number of the Najdī scholars, also Shaykh al-Albānī رحمهم الله and Shaykh Ḥamūd al-‘Uqlā’ from contemporary scholars were all adherants to this view.

Shaykh ‘Abd al-Laṭīf ibn ‘Abd ar-Raḥmān ibn Ḥasan رحمهم الله said, “As for the question of seeking victory through them (i.e. the disbelievers), it is one of dispute. What is correct according to those who have investigated the issue is that it is forbidden unrestrictedly, and their evidence being the ‘agreed upon’⁶⁶¹ *Ḥadīth* of ‘Ā’ishah, and the *Ḥadīth* of ‘Abd ar-Raḥmān ibn Ḥabīb, which is *Ṣaḥīḥ Marfū’* ⁶⁶²[...]. While those that say it is permitted rely upon the *Mursal* (narration)⁶⁶³ of az-Zuhrī.”⁶⁶⁴ He

⁶⁶¹ (متفق عليه) Meaning that both al-Bukhārī and Muslim رحمهم الله have recorded the narration in their *Ṣaḥīḥ*’s. Thus, such ‘agreed upon’ narrations rank highest in the scholars grading of *Ḥadīth* authenticity. Refer to Shaykh ibn al-‘Uthaymīn’s commentary on *al-Bayqūniyyah* (p.53)

⁶⁶² (صحيح مرفوع) The narration in which the *Isnād* (chain of narration) ends with the Prophet ﷺ. Unlike when the term *Marfū’* used unrestrictedly, the addition of the word *Ṣaḥīḥ* indicates that the narration is authentically attributed to the Prophet ﷺ.

⁶⁶³ (مرسل) The *Mursal* is the narration in which the Companion has been omitted from the *Isnād* (chain of narrators), effectively rendering it, in most

also said, “The misconception held onto by those who argue (for) the permissibility of seeking the disbelievers assistance is like what has been mentioned by those jurists that permit seeking the assistance of the polytheist due to necessity. It is a weak and rejected argument built upon a *Mursal* narration, refuted by both the texts of the Qur’ān and the authentic and explicit prophetic *Aḥādīth*.”⁶⁶⁵

Shaykh al-Albānī رحمه الله said in *as-Silsilah aḍ-Ḍa’īfah*, “And the conclusion of what has preceded is that the *Ḥadīth* is *Ḍa’īf*, and cannot be relied upon at all in the matter, in addition to its contradiction to the *Ṣaḥīḥ* narration of ‘Ā’ishah. The stance taken by ibn al-Mundhir and those agreeing with him that seeking the disbelievers assistance is unrestrictedly forbidden, is the correct stance.”

Shaykh Abū Firās as-Sūrī رحمه الله said regarding the issue:⁶⁶⁶

...The second thing, which is more important than the first is: *Jihād* is a form of worship, and with worship we only accept that which Allāh and the Prophet ﷺ have legislated for us. *Jihād* is not like, for example, building a wall; if we like we can build it here or if we like we can build it there. It is worship, and worship does not evolve. We are ordered

cases, *Ḍa’īf* (weak) as it has not fulfilled the condition for authenticity stating the *Isnād* must be continuous and unbroken from its beginning to end. Refer to Shaykh ibn al-‘Uthaymīn’s commentary on *al-Bayqūniyyah* (p.93). According to scholars such as ibn Ḥajar al-Asqalānī, ash-Shawkānī, and aṣ-Ṣan’ānī, the *Marāsīl* (pl. of *Mursal*) of az-Zuhrī are all *Ḍa’īf*. Refer to *Nayl al-Awṭār* (7/265) and *Subul as-Salām* (2/1047)

⁶⁶⁴ *Ar-Rasā’il wa’l-Masā’il an-Najdiyyah* (3/67)

⁶⁶⁵ *ibid.* (3/164)

⁶⁶⁶ Audio interview in Aleppo, Syria, late 2015, from 15:46 to 21:30. An edited and abridged translation of its transcript can be found in *Al Risalah Magazine, Issue 2: Victory Loves Preparation* (pp.63-68). The original Arabic audio interview can be downloaded [here](#).

to stick to the legislated texts ordained upon us regarding worship.

(As such) the people (of *Jihād*) start to deviate from the path they are upon because of the 'help' they receive – they (i.e. the disbelievers) come to you saying, 'we will assist you without conditions.' So the people accept this, and this is the first deviation. The Prophet ﷺ said, “*Indeed we do not seek help from the Mushrikīn,*” and “*We do not seek assistance from the Mushrikīn against the Mushrikīn.*”

So the distorters (of the truth) from mankind and *Jinn* came to lure them away from the truth (with doubts), however there are texts in the Qur'ān (warning against listening to them), Allāh says:

﴿وَلَا تَتَّخِذُوا مِنْهُمْ وَلَا نَصِيرًا﴾^{٨٩}

and take not from among them any ally or helpers.⁶⁶⁷

Thus, Allāh and His Messenger ﷺ prohibit the believers from taking the disbelievers and *Munāfiqīn* whom are known outwardly, as *Awliyā'*,⁶⁶⁸ and He prohibits us from seeking victory through the disbelievers. So why would we accept seeking aid from them, which is less than seeking victory?

In the early days, the Prophet ﷺ used to accepted gifts from the polytheist, but then Allāh prohibited him. There authentic *Aḥādīth* in *ibn Mājah*, *al-Mustadrak* and *an-Nasā'ī*:

⁶⁶⁷ *Sūrah an-Nisā* (4):89

⁶⁶⁸ pl. of *Wālī*: friend, protector, supporter

Ḥakīm ibn Ḥizām, and he was the nephew of Khadījah رَضِيَ اللَّهُ عَنْهَا, came to the Prophet ﷺ with a mantle and said to him, “I want to give you this as a gift.” The Prophet ﷺ asked him, “*Have you become a Muslim?*” He replied, “No.” So the Prophet ﷺ said to him, “*I have been prohibited from accepting the gifts of the polytheists.*” He then said to him, “O Messenger of Allāh, but I have brought it to you as a gift.” He ﷺ replied, “(I will only accept it) for its price; as for a gift, then no.” But when the Prophet ﷺ saw that he was persistent upon giving him a gift, then he gave him (inaudible) in return for it. ⁶⁶⁹

‘Iyyād ibn Ḥimmār al-Mujāshi’ī came with a camel to the Prophet ﷺ, and he said, “*I was prohibited to accept gifts from the polytheists.*” ⁶⁷⁰

⁶⁶⁹ A similar narration is present in *Musnad Aḥmad: Musnad al-Makkiyyīn* (15523) with a *Ṣaḥīḥ Isnād*:

عَنْ عِرَاكِ بْنِ مَالِكٍ، أَنَّ حَكِيمَ بْنَ حِزَامٍ، قَالَ: كَانَ مُحَمَّدٌ ﷺ أَحَبَّ رَجُلٍ فِي النَّاسِ إِلَيَّ فِي الْجَاهِلِيَّةِ، فَلَمَّا تَنَبَّأَ، وَخَرَجَ إِلَى الْمَدِينَةِ، شَهِدَ حَكِيمُ بْنُ حِزَامٍ الْمَوْسِمَ وَهُوَ كَافِرٌ، فَوَجَدَ حُلَّةً لِيَذِي يَزَنَ تُبَاعُ، فَاشْتَرَاهَا بِخَمْسِينَ دِينَارًا، لِيُهِدِيهَا لِرَسُولِ اللَّهِ ﷺ، فَقَدِمَ بِهَا عَلَيْهِ الْمَدِينَةَ، فَأَرَادَهُ عَلَى قَبْضِهَا هَدِيَّةً فَأَنَى، قَالَ عُبَيْدُ اللَّهِ: حَسِبْتُ أَنَّهُ قَالَ: إِنَّا لَا نَقْبَلُ شَيْئًا مِنَ الْمُشْرِكِينَ، وَلَكِنْ إِن شِئْتَ أَخَذْنَاهَا بِالْثَّمَنِ فَأَعْطَيْنَاهُ حِينَ أُنِيَ عَلَيَّ الْهَدِيَّةُ

‘Irāk ibn Mālik narrated that Ḥakīm ibn Ḥizām said, “In the days of ignorance Muḥammad ﷺ was the most beloved of people to me.” So when he was granted prophethood and thereafter left for al-Madīnah, Ḥakīm ibn Ḥizām witnessed the festival whilst still a disbeliever. He found a garment (there) and bought it for fifty *Dīnār* in order to present it as a gift to the Messenger of Allāh. Thereafter, he went with it to al-Madīnah wanting to give it as a gift, but the Messenger of Allāh refused to accept it. ‘Ubaydallāh said, “I reckon that he said, ‘*Indeed we do not accept anything from the polytheists, however if you wish we will take it for its price (i.e. buy it from you).*’” So I gave it to him when he refused to accept it from me as a gift.”

⁶⁷⁰ The full narration is in *Sunan Abī Dāwūd: The Book of Kharāj, Governance, and Fay’* (3057), *Jāmi’ at-Tirmidhī: Chapters on the Expeditions*

As for us now in the *Jihādī* organisations, then the deviancy begins with the acceptance of such gifts and support, and the instances in Islām that confirm this are numerous:

- The Muslim Brotherhood (*al-Ikhwān al-Muslimīn*) used to take help (from the disbelievers) in the 1980's, and they ended up with a superficial appearance of Islām, however if they were to stand under the sun for an hour and their makeup were to melt away, then you would see their true colour(s).
- The Afghans,⁶⁷¹ what did they say previously? They used to take open aid - known to everyone, from Saudi Arabia, America (i.e. the US), and some of the European nations. (As a result) their *Jihād* finished and they have no say, and Sayyāf has even ended up in the secular (US-installed) government along with Karzai.

Everyone who takes aid from the disbelievers, then their *Jihād* ends, their authority (*Tamkīm*) over, they deviate, and then they're gone with the wind. So even if in the beginning it is said, 'we take (aid) with no conditions,' then this is not but a trick from *shayṭān*. (Even if) in the beginning, they (truly) may not have stipulated any conditions, you can be sure that by the end there will be.

of the Messenger of Allāh ﷺ (1577), and *Musnad Aḥmad: Musnad ash-Shāmiyyīn* (17482). Abī Dāwūd's wording is:

عَنْ عِيَّاضِ بْنِ حِمَارٍ، قَالَ: أَهْدَيْتُ لِلنَّبِيِّ ﷺ نَاقَةً، فَقَالَ: «أَسْلَمْتَ؟»
فَقُلْتُ: لَا، فَقَالَ النَّبِيُّ ﷺ: «إِنِّي نُهَيْتُ عَنْ زَبَدِ الْمُشْرِكِينَ»

'Iyyād ibn Himmār said, "I gave a camel as a gift to the Prophet ﷺ, so he said, 'Have you become a Muslim?' I replied, 'No.' He ﷺ then said, 'I have indeed been prohibited from the gifts of the polytheists.'"

⁶⁷¹ The Shaykh was referring to the major factions in Afghanistan during the Soviet-Afghan *Jihād* in the eighties, the heads of which were; Gulbuddin Hekmatiyar, Yūnus Khālīsh, Aḥmad Shah Mas'ūd, 'Abd ar-Rabb ar-Rasūl Sayyāf, Burhanuddeen Rabbānī, Muḥammad Nabi, and Aḥmad Gailānī

Chapter 26: The Ruling on Seeking Assistance from the Disbelievers in Fighting the Enemy

Presently (in 2015), *Ḥarakah Aḥrār ash-Shām*⁶⁷² (and many others) have taken aid from Turkey, Qatar, and other nations. Then Turkey and Qatar said to them, ‘Release a charter proclaiming that your goal is not to establish an Islamic government (state).’ Thereafter they released the ‘*Charter of Honour*’⁶⁷³ (stating the aforementioned points), which has no link to Islām whatsoever. When we disagreed and asked them, ‘Why did you release this (statement)?’ They replied, ‘We are compelled (to) by Turkey and Qatar, and they are the ones who pay our bills.’

So now there is a principle (we can extract from this); ‘Tell me who funds you, and I will tell you who you are, and what your work will be (amount to) - will it be *Jihād*, or not?’

These are the two most important points in my view, and all praise is for Allāh the Lord of all the worlds.

[End of Shaykh Abū Firās quote]

Yet, a number of the scholars that hold it impermissible exclude from the act of *Isti’ānah* things such as taking material or logistical support from the disbelievers. This is due to the assistance the Prophet ﷺ sought from Ṣafwān ibn Umayyah رَضِيَ اللَّهُ عَنْهُ when he ﷺ borrowed armour from him for the Muslims

⁶⁷² They were previously (2012-2014) one of the largest fighting groups in Syria, however in 2015 they drastically scaled back their military activities and officially declared themselves to be a non-military political entity. Nevertheless, in early 2019 they apparently abandoned political dialogue and reverted back to being a fighting force, and we ask Allāh to forgive and guide all of his sincere slaves

⁶⁷³ About this [document](#) (ميثاق الشرف الثوري). A link to the original Arabic can be found [here](#). The document was also released in English, although to date, we have not been able to locate it

on the day of Ḥunayn,⁶⁷⁴ but nothing in excess of this, due to his words, “*I will never seek the aid of a polytheist.*” Thus, the nature of help is restricted to material and logistical matters, with *Imām* Mālik رَحِمَهُ اللهُ stating, “I do not see that seeking the assistance of the polytheists in fighting the polytheists (is permissible) except if they are servants or sailors.”⁶⁷⁵

Ibn al-Qāsim رَحِمَهُ اللهُ also states in *Tāj wa'l-Iklīl* (4/545) “It is not permissible to seek the assistance of the polytheists in war due to his statement:

لَنْ أَسْتَعِينَ بِمُشْرِكٍ

“*I will never seek the aid of any polytheist,*” however there is no problem if they are sailors (i.e. navigators) or servants.”⁶⁷⁶

Ibn Ḥazm رَحِمَهُ اللهُ says in *al-Muḥallā* (11/355) referring to the above *Ḥadīth*, “And this is general and prohibits from seeking their aid in ruling, fighting, or anything else. Except the capacities the *Ijmā'* has confirmed as being permissible to seek their help in, such as them being stable-hands, labourers, servants, and likewise from those things that do not remove them from their state of humiliation. And the polytheist (*Mushrik*) is a name that applies to both the *Dhimmī* and the *Ḥarbī*.”

Or, what has specified the generality of the statement, such as the incident wherein the Prophet ﷺ borrowed pieces of armour and spears from Ṣafwān ibn Umayyah رَحِمَهُ اللهُ prior to the battle of Ḥunayn, and also the Prophet's ﷺ using ibn Waraqā' al-Khuzā'i as a guide and spy on the day of Ḥudaybiyyah. As has been

⁶⁷⁴ Refer to *Sunan Abī Dāwūd: The Book of Wages* (3562), an-Nasā'i's *al-Kubrā* (5779), and *as-Silsilah aṣ-Ṣaḥīḥah* (631)

⁶⁷⁵ *Tafsīr al-Qurṭubī* (4/445) and *Mashārī' al-Ashwāq* (p.1030)

⁶⁷⁶ Ad-Ḍasūqī explains in *Ḥāshiyah* (2/178), “What is intended by the word polytheist (*Mushrik*) is not restricted to the one who associates other deities with Allāh. However, it applies to the disbelievers unrestrictedly, and as such, (although) the term is specific its (intended) meaning is general.”

mentioned by the likes of ibn Taymiyyah, ibn Qayyim, ash-Shawkānī, and ibn Hajar رَحِمَهُمُ اللَّهُ.⁶⁷⁷

Yet others include intellectual and advisory support and their likes, along with the Muslims being in a state of necessity, such as the Muslims receiving specialist training or intelligence from the disbelievers, citing the incident in which the Prophet ﷺ and Abū Bakr رَضِيَ اللَّهُ عَنْهُ hired one of the disbelievers to assist them in their *Hijrah* to al-Madīnah as evidence.

Al-Bukhārī رَحِمَهُ اللَّهُ records in his *Ṣaḥīḥ: The Book of Virtues of the Anṣār* (3905) from ‘Ā’ishah رَضِيَ اللَّهُ عَنْهَا:

وَاسْتَأْجَرَ رَسُولُ اللَّهِ ﷺ وَأَبُو بَكْرٍ رَجُلًا مِنْ بَنِي الدِّيلِ، وَهُوَ مِنْ بَنِي عَبْدِ بْنِ عَدِيٍّ، هَادِيًا خَرِيَّتًا، وَالْخَرِيْتُ الْمَاهِرُ بِالْهَدَايَةِ، قَدْ غَمَسَ حِلْفًا فِي آلِ الْعَاصِ بْنِ وَائِلٍ السَّهْمِيِّ، وَهُوَ عَلَى دِينِ كُفَّارِ قُرَيْشٍ، فَأَمَّنَاهُ فَدَفَعَا إِلَيْهِ رَاحِلَتَيْهِمَا، وَوَعَدَاهُ غَارَ ثَوْرٍ بَعْدَ ثَلَاثِ لَيَالٍ، بِرَاحِلَتَيْهِمَا صُبْحَ ثَلَاثٍ، وَأَنْطَلَقَ مَعَهُمَا عَامِرُ بْنُ فُهَيْرَةَ، وَالِدُ الدَّلِيلِ، فَأَخَذَ بِهِمْ طَرِيقَ السَّوَاحِلِ،

“The Messenger of Allāh ﷺ and Abū Bakr had hired a man from the tribe of Banī Ad-Dīl from the family of Banī ‘Abd ibn ‘Adī as an expert guide, and he was in alliance with the family of Al-‘Āṣ ibn Wā’il as-Sahmī and he was upon the religion of the infidels of Quraysh. The Prophet and Abū Bakr trusted him and gave him their two she-camels and took his promise to bring their two she camels to the cave of the mountain of Thawr in the morning after three nights later. And (when they set out), ‘Āmir ibn Fuhayrah and the guide went along with them and the guide led them along the coast.”

⁶⁷⁷ Refer to *Nayl al-Awṭār* (7/264&265), *Faṭḥ al-Bārī* (6/179&180), *Zād al-Ma’ād* (2/126&250), and *Majmū’ al-Fatāwā* (28/643)

Ibn Baṭṭāl رحمته الله says, commenting on the above narration, “The majority of jurists permit the hiring of disbelievers in situations of necessity and other than that, as this results in their (i.e. the disbelievers) humiliation.”

Owing to this Shaykh Abū Yaḥyā al-Lībī رحمته الله says in *al-Mawrud al-‘Uthb* (p.59), “(It is) permissible to benefit from the expertise of the disbelievers, such as their geographical knowledge, or their (logistical support in) transporting weapons. Included in this [...] is benefiting from their ability to smuggle people, weapons, and equipment via land and sea between countries. In addition, benefiting from their skills in forging and counterfeiting passports, documents, stamps (such as visa and passport stamps), and other than these. Thus, seeking their support in all of these thing is permissible, whether they are hired for these services or other than this, along with the conditions that they are trustworthy, the Muslims are safe from their treachery, and they do not occupy any positions (in our organisations), or are elevated over the Muslims. [...] And there is no doubt that the Prophet ﷺ reached the peak of necessity and faced unrivalled danger during his *Hijrah* ...”⁶⁷⁸

⁶⁷⁸ Shaykh Abū Mus’ab as-Sūrī رحمته الله says in *Da’wah al-Muqāwwamah al-Islāmiyyah al-‘Ālamiyyah* (p.1417&1418):

There are clear advantages and they are in the high military levels which some cadres have managed to attain through the possibilities of preparation, training and the high-level multiple material support which the countries, their armies and security agencies have offered. However, there are serious disadvantages which our past experiences have revealed:

- The revelation of many of the secrets of the organizations, their personal and informational secrets, to the states hosting the training camps. This information represents a vehicle of pressure and a bargaining chip. In the end, it colors the table of security and intelligence cooperation between the states which change their positions continuously in a Machiavellian manner. Experience has proven that this is strategically a mortal trap.
- This method enables the host states, with the passage of time, to penetrate the organizations, even the Islamic *Jihādī* organizations, and win over some members of these organizations, and put them under their administration and intelligence work. This happens especially when the

In conclusion, despite the majority of scholars permitting, albeit conditionally, the Muslims seeking the assistance of the disbelievers against their enemies from the disbelievers, rarely today are the Muslims capable of adhering to **any** of the aforementioned conditions, despite their perceived situation of necessity for such support. Thus, the argument that holds *Isti'ānah* impermissible appears to be the strongest and closest to the truth - and Allāh knows best.

The associated harms upon the *Ummah* resulting from such relationships far outweigh any apparent benefits, and many *Jihādī* groups ultimately find themselves in a relationship with those they sought help from, like the relationship between the suckling child and its mother. They become fully dependant upon the help they receive until they are helpless to differ with any of the suggestions or orders issued by their disbelieving patrons, and Allāh's refuge is sought from that. This has lead a number of scholars to conclude, even if they were originally inclined to the view that seeking assistance from the

duration of the organizations' stay in the host states is protracted and they have [i.e. the organizations] political, military and media hierarchy, as was the case with the Syrian *Jihādī* experience (in the early 1980's). During the presence of its leadership in Iraq, Jordan and elsewhere [...], these countries managed over time to intervene in the affairs of the groups and impose on them their will. [Hence, the *Jihādī* groups] were forced to become regional pawns in their hands, because these countries pursued a policy of financial closure and strangulation as we will see in the section on financing.

- The process of departing for camps in neighbouring safe havens often represents an Achilles heel in terms of security due to the movement of *Mujāhidīn* elements and their traveling to these places. The security traps set up by the intelligence agencies have been a wake-up call in such cases, because they have been able in many cases to plant their agents in such camps and the open circles which usually drift into the overt movement, and abandon the necessary security alertness. This happens especially with the passage of time and when the departure and return of the *Jihādī* elements is transformed into the scope of the opposition that emigrates for stability and empties the very scene of *Jihād* itself.

disbelievers is permissible, that today, such alliances are almost always much more detrimental to the Muslims than their actual enemies on the battlefield. This leaves no option but to return to the issues original ruling echoed in the words of the Messenger

ﷺ:

فَإِنَّا لَا نَسْتَعِينُ بِالْمُشْرِكِينَ عَلَى الْمُشْرِكِينَ

“We will certainly not seek the assistance of the polytheists against the polytheists.”⁶⁷⁹

And this is in accordance with the authentic texts of the Book and the *Sunnah*, in addition to being in line with the principle of *Fiqh - Preventing the Harm*.⁶⁸⁰ As such, in agreement with the authentic texts, the intellect, and the reality of what has befallen the Muslims in their historical and contemporary *Jihād*, one is lead to only one conclusion - and that is of the impermissibility of *Isti'ānah*. With the possible exception of the areas mentioned by Shaykh Abū Yahyā al-Lībī - and indeed Allāh ﷻ knows best and guides to all success.⁶⁸¹

⁶⁷⁹ *Muṣannaḥ ibn Abī Shaybah: Kitāb as-Siyar* (33159), *Musnad Ahmad* (15801), *al-Mustadrak* (2563), and authenticated by al-Albānī in *Ṣaḥīḥ wa Ḍa'īf al-Jāmi'* (4056)

⁶⁸⁰ In Arabic this principle is known as (سد الزرائع), and is concerned with the prohibition of actions that it is highly likely, in specific situations, will directly lead to the prohibited (*Harām*), even if those actions were originally permissible (*Mubāḥ*). An example would be selling grapes which in and of itself is permissible, to a wine maker who, it is highly likely, will use the grapes in the production of alcoholic wine, which is prohibited. Thus, the selling of the grapes to this individual in this instance would be prohibited (*Harām liḡhayriḥ*) in order to prevent the actual prohibited act (*Harām liḡḡḡḡḡḡ*) from transpiring. Refer to *al-Wajīz fī Usūl al-Fiqh* (pgs.245-251)

⁶⁸¹ According to this, even if it is argued that seeking assistance from the disbelievers against other disbelievers is not *Harām* in and of itself (حرام لذاته), then it must be concluded that it is now prohibited owing to its evil consequences (حرام لغيره), and Allāh knows best

الحكم الإستعانة بالكفار في قتال المسلمين
**THE RULING ON SEEKING ASSISTANCE
FROM THE DISBELIEVERS IN FIGHTING
MUSLIMS**

Concerning this issue, it is possible to divide the type of Muslims being fought into two categories:

- 1) The upright Muslims, and
- 2) The wrongdoers, innovators, and *Bughāh*

As for the first instance, that of seeking the support of the disbelievers to fight upright Muslims, aiding the disbelievers against the Muslims, and ultimately becoming one of the disbelievers' soldiers. There appears not to be any difference of opinion amongst the scholars that such an act is *Ḥarām* and a nullifier of one's Islām. This is due to it involving exposing the secrets of the Muslims to the disbelievers, and enabling them to capture, kill, and ultimately triumph over the believers and Islām.

Imām ash-Shawkānī رَحِمَهُ اللَّهُ states in *Nayl al-Awtār* (7/264), "The prohibition of seeking the assistance of the disbelievers against the Muslims has been reported from ash-Shāfi'ī, due to it entailing enabling a way for the disbelievers to prevail over the Muslims. As such, Allāh has indeed stated:

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

And never will Allāh give the disbelievers over the believers a way [to overcome them]." ⁶⁸²

⁶⁸² *Sūrah an-Nisā'* (4):141. The *Mufasssirīn* have stated that this noble verse is both a statement of fact, and a command to the believers not to engage in any acts that may involve elevating the disbelievers over the Muslims in any way possible

Shaykh Muḥammad ibn ‘Abd al-Wahhāb رَحِمَهُ اللهُ mentioned in his treatise, *the Nullifiers of Islām*, “The eighth nullifier: Backing or supporting the polytheists and aiding them against the Muslims. And the evidence of this is the Saying of Allāh, the Most High:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَتَّخِذُوا الْيَهُودَ وَالنَّصَارَىٰ أَوْلِيَاءَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ وَمَن يَتَوَلَّهُمْ فإِنَّهُ مِنَّهُمْ﴾

O you who have believed, do not take the Jews and the Christians as allies. They are [in fact] allies of one another. And whoever is an ally to them among you - then indeed, he is [one] of them.” ⁶⁸³

Ibn Ḥazm رَحِمَهُ اللهُ stated in *al-Muḥallā*, “***And whoever is an ally to them among you - then indeed, he is [one] of them.*** This is taken upon its literal meaning and that is that he is a disbeliever just like them, and this is the reality about which no two Muslims differ.”

Shaykh Aḥmad Shākir رَحِمَهُ اللهُ said in *Kalimah al-Ḥaqq* (p.130) regarding the ruling of the Muslim cooperating with the English and French during their aggression upon the Muslims of Egypt (in the 1950's): “As for cooperating with them in any way, whether it be by a little or great (amount), that is clear disbelief and *Aggravated Apostasy*. There is no excuse accepted for this, and no (mistake in) interpretation is of benefit, whether it be on the part of an individual, group, government, or leader. All of them have fallen into disbelief and apostasy, except the one who is ignorant and made a mistake, and then retracted and repented.”

Shaykh ibn Bāzz رَحِمَهُ اللهُ commented regarding this in his explanation on the *Nullifiers of Islām* (p.197), “And it *Wājib* upon the believers, that anywhere they happen to be with the

⁶⁸³ *Sūrah al-Mā'idah* (5):51

enemies of Allāh, they hate and show animosity towards them for the sake of Allāh; regardless if it is during times of war or peace. If we are engaged in war and between us is *Jihād*, assisting them, whether by a large or small amount, is apostacy from Islām [...], and assisting and helping them against the Muslims is from the nullifiers of Islām according to all of the scholars.”

Concerning the Muslim seeking assistance from the disbelievers against the wrongdoers, innovators, and *Bughāh* from amongst the Muslims, the majority of scholars agree that this act is impermissible. There is a difference amongst them however on whether, like in the aforementioned case, it is an act of apostasy or is rather is a Major Sin not reaching the level of disbelief.

An-Nawawī رَحِمَهُ اللَّهُ said in *Rawḍah al-Ṭālibīn* (10/60), “It is not permissible to seek assistance from the disbelievers against them because it is not allowed to empower a disbeliever over a Muslim.” This is due, and Allāh knows best, to the verse in *Sūrah an-Nisā’* (4:141) wherein He ﷻ says:

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

and never will Allāh give the disbelievers over the believers a way [to overcome them].

Ibn Qudāmah رَحِمَهُ اللَّهُ said in *al-Mughnī* (8/529) “Under no circumstance should the Muslim should seek help from the disbelievers in fighting against them (i.e. the wrongdoing Muslims), nor from one who considers it permissible to kill them by going after them when they flee the battlefield. And this was what ash-Shāfi’ī stated.”

Imām ash-Shāfi’ī رَحِمَهُ اللَّهُ said in *al-Umm*, “It is not allowed for the people of justice in my opinion to seek assistance against *al-Bughāh* from one of the polytheists, whether he be a *Dhimmī* or a

Ḥarbī, even if the rule of the Muslims is dominant. And I will not give to one who opposes the religion of Allāh, glory be to Him, a means to kill those who follow the religion of Allāh.”

Shaykh ‘Abd al-Laṭīf ibn ‘Abd ar-Raḥmān ibn Ḥasan Āl Shaykh, رَحِمَهُ اللهُ said, “As for the Muslim seeking assistance from the polytheist against the transgressor. Then none has said this except one whose opinion is an isolated one, by basing it on *Qiyās* (analogy), and has not looked at the reason of the ruling and the relation between the basic ruling and its branches (as is to be done in *Qiyās*).”

Ibn Ḥazm رَحِمَهُ اللهُ concludes in *al-Muḥallā* (11/355&356), “The people have differed over the issue; with a group of them holding it to be impermissible to seek the assistance of a *Ḥarbī* against them (i.e. *al-Bughāh*), neither a *Dhimmi*, nor anyone that regards permissible killing their fleeing ones, and this is the view of ash-Shāfi’ī رَحِمَهُ اللهُ. The companions of Abū Ḥanīfah said that there is no problem to seek the assistance of the *Ahl al-Ḥarb*, *Ahl adh-Dhimmah*, and their likes from *al-Bughāh* against them. However, we have already mentioned in *Kitāb al-Jihād* the statement of the Messenger of Allāh ﷺ:

إِنَّا لَا نَسْتَعِينُ بِمُشْرِكٍ

‘Indeed we will not seek the help of a polytheist,’

This is a general prohibition against seeking their assistance in matters of governance, war, or anything else for that matter, unless such assistance is established as permissible in the *Ijmā’*. Such as (in their use as) stable hands, workers, labourers, and other than these from the affairs that do not negate their status of humiliation.⁶⁸⁴ And the polytheist is a noun that applies to both

⁶⁸⁴ It appears, and Allāh knows best, the author is referring here to the command of Allāh to humiliate the disbelievers in *Sūrah at-Tawbah* (9:29):

the *Dhimmī* and the *Ḥarbī*. And this is, as we see it, as long as the upright (Muslims) continue to possess strength.

However, if confronted with destruction and (the Muslims) are compelled, as they do not find any other way out, there is no problem with them turning to *Ahl al-Ḥarb*. And they are strengthened by *Ahl adh-Dhimmah* as long as this does not harm a Muslim or *Dhimmī* with regards to their blood, wealth, or womenfolk in a way that is impermissible. The evidence for this is the statement of Allāh the Exalted (6:199):

﴿وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرَرْتُمْ إِلَيْهِ﴾

He has explained in detail to you what He has forbidden you, excepting that to which you are compelled.

And this (verse) is general regarding everything that one is compelled to do, except that which has been prohibited by a text (from the Qur’ān, *Sunnah*) or the *Ijmā’*.

Therefore, if a Muslims knows, whether it be an individual or a group, the one that he seeks help from the *Ahl al-Ḥarb* or a *Dhimmī*, will harm a Muslim or *Dhimmī* in a way that is not permissible. It becomes *Ḥarām* for him to seek their assistance, even if he is destroyed. Rather, he must remain patient upon Allāh’s decree even if his soul, family, and wealth are (all) destroyed, or he fights until he dies as an honourable martyr, for indeed death is a must with none escaping its appointed time. The proof for this the fact that it is not permissible for anyone to repel oppression from himself in a way that transfers that

Fight those who do not believe in Allāh or in the Last Day and who do not consider unlawful what Allāh and His Messenger have made unlawful and who do not adopt the religion of truth [i.e., Islām] from those who were given the Scripture - [fight] until they give the Jizyah willingly while they are humiliated.

oppression to someone other than him, and there is no difference of opinion concerning this (principle).

As for seeking the assistance of other *Bughāh* similar to themselves (i.e. similar to the ones being fought), a number of (scholars) have prohibited it, relying upon for evidence the statement of Allāh the Exalted (18:51):

﴿وَمَا كُنْتَ مُتَّخِذَ الْمُضِلِّينَ عَضُدًا﴾

and I would not have taken the misguiders as assistants.

Although others did permit it, arguing that we are not taking them as assistants - and Allāh's refuge is sought. Rather, we are employing their own likes against them in order to preserve the upright (Muslims), like Allāh the Exalted has said (6:129):

﴿وَكَذَلِكَ يُؤْتِي بَعْضُ الظَّالِمِينَ بَعْضًا بِمَا كَانُوا يَكْسِبُونَ﴾

And thus will We make some of the wrongdoers allies of others for what they used to earn

(Likewise) if we are able, we should pit the disbelievers against each other until they end up fighting [...] and this is a good thing.”

[End of ibn Ḥazm quote]

Another reason the scholars prohibit seeking the help of the disbelievers against the criminals and *Bughāh* from amongst the Muslims, is that the intention behind fighting them is solely to ward off their aggression and return them to obedience and the

command of Allāh. However the disbeliever, unlike the dog,⁶⁸⁵ does have intentions, and these are not in line with the *Sharī'ah* and its objectives, with Allāh ﷻ saying about them:

﴿لَا يَرْقُبُونَ فِي مُؤْمِنٍ إِلَّا وِلَا ذِمَّةً وَأُولَٰئِكَ هُمُ الْمُعْتَدُونَ﴾⁶⁸⁶

They do not observe toward a believer any pact of kinship or covenant of protection. And it is they who are the transgressors.⁶⁸⁶

Aṭ-Ṭarīfī says in his commentary on The Nullifiers of Islām, *al-'Ilām bi-Tawdīh Nawāqid al-Islām* (pgs.70&71), “As for seeking the help of the disbelievers to fight the *Bughāh* from the Muslims, the majority of scholars prohibit this act. If the fighting of the *Bughāh* is one that will strengthen the power, authority, and dominance of the disbelievers over the Muslims, benefitting them more than it does the Muslims then no doubt, it falls under the implication of Allāh’s words (5:51):

﴿وَمَنْ يَتَوَلَّهُمْ مِنكُمْ فَإِنَّهُ مِنَهُمْ إِنَّ اللَّهَ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ﴾

And whoever is an ally to them among you - then indeed, he is [one] of them.

And from the *Isti'ānah* with them in fighting that is less than that in its ruling, is that which does not reach the level of disbelief, apostacy, and abandoning the religion.

⁶⁸⁵ Some from the Ḥanafī School permitted seeking the assistance of the *Ahl adh-Dhimmah* and the disbelievers against the *Khawārij*, arguing that it is akin to employing dogs in the fight against them. Refer to *al-Mabsūt* (10/23&24) and ibn Humām’s *Faṭḥ al-Qadīr* (6/109)

⁶⁸⁶ *Sūrah at-Tawbah* (9):10

Refer to *al-Qawl al-Mubīn fī Ḥukm al-Isti'ānah fī'l-Qitāl bighayr al-Muslimīn* (p.12)

Ibn Ḥazm al-Andalūsī said in *al-Muḥallā* (12/126&127), ‘As for the one from the people of the frontlines of the Muslims who is driven by fervour to seek the help of the *Musrikīn al-Ḥarbiyyīn*, allowing them to fight the one who opposes him from the Muslims, or to take his wealth or captives (i.e. slaves). If he is the one with the upper hand in the relationship and the disbelievers are under his authority - as though they were his followers, then this is the hight (i.e. peak) of *Fusūq* (rebelliousness) and he has destroyed (himself with such an enormous act of transgression). However, it is not in this case (an act of) disbelief, as he has not done anything that equates with disbelief according to the Qur’ān or the *Ijmā’*. However, if the authority of the disbelievers is imposed upon him, then through this, according to what we have mentioned, he has committed disbelief. While if they are equal in terms of authority, such that one does not impose himself upon the other, we do not view him as having committed disbelief by this act, and Allāh knows best.’”

It is most unfortunate to witness today people attempting to justify the most heinous of crimes committed by the disbelievers against Muslims, by mentioning the existence of a difference of opinion amongst the scholars regarding seeking the assistance of the disbelievers against the transgressors, innovators, or *Khawārij*. Accordingly, it is common to see that before such a call is made promoting the disbelievers’ assistance being sought against another group of believers, charges of wrongdoing, innovation, and *Khurūj* are levelled against the believers about to be attacked. Nevertheless, they fail to mention that for the most part, the difference of opinion is over whether this act falls into the realms of apostasy, or that which does not take its doer outside the fold of Islām but is nonetheless still a major sin. As such, regardless of the apparent differences between the scholars, this is a despicable crime that can never be promoted or condoned by anyone who truly believes in Allāh and the Last

Chapter 26: The Ruling on Seeking Assistance from the Disbelievers in Fighting the Enemy

Day, as it is impermissible whichever way you look at it. Allāh exposes such people in *Sūrah at-Tawbah* (9:67) saying:

﴿يَأْمُرُونَ بِالْمُنْكَرِ وَيَنْهَوْنَ عَنِ الْمَعْرُوفِ وَيَقْبِضُونَ
أَيْدِيَهُمْ نَسُوا اللَّهَ فَنَسِيَهُمْ إِنَّ الْمُنَافِقِينَ هُمُ الْفَاسِقُونَ﴾

They enjoin what is wrong and forbid what is right and close their hands.⁶⁸⁷ They have forgotten Allāh, so He has forgotten them [accordingly]. Indeed, the hypocrites - it is they who are the defiantly disobedient.

In addition, the current reality is far worse than has been mentioned by the scholars of the past, as it is not a case of Muslims seeking assistance from the disbelievers in order to wage war against another group of Muslims. It is, in most cases, the disbelievers ordering Muslims to assist them in their war against Islām, doing their ‘dirty work’ and being their ‘boots on the ground.’ If this was not enough of an insult, disgrace, and humiliation for those claiming to be from amongst those Allāh has honoured with Islām, they are subsequently told to sign a blank cheque to pay for the disbelievers’ latest crusade! ⁶⁸⁸

⁶⁸⁷ Ibn Kathīr says in his *Tafsīr* (4/464) regarding Allāh’s words ***and close their hands***, “from spending in Allāh’s cause,” (i.e. spending on *Jihād*). While al-Qurtubī mentions in his *Tafsīr* (4/526), “It refers to abandoning *Jihād*.”

⁶⁸⁸ And this is one of the clearest charges of disbelief against those ‘Muslim’ governments (and their militaries, etc) who gladly participate in the ‘War on Terror’. The foremost amongst them being - and Allāh knows best - the United Arab Emirates (UAE), headed by the devil ibn Zayed (MBZ) - may Allāh curse him

CHAPTER SUMMARY

Scholars have differed over the permissibility of seeking the disbelievers' assistance in matters related to warfare. They divide this assistance into two categories according to whom the Muslims are fighting:

- 1) Disbelievers and apostates
- 2) Other Muslims, who can be further sub-divided into:
 - i) Upright Muslims
 - ii) The wrongdoers and transgressors, such as *al-Bughāh* and the *Khawārij*

Regarding the first category, there are those who permit the act stipulating that a number of conditions be met. While others forbid the act, which appears to be the correct opinion.

As for the act of seeking support from the disbelievers in fighting the upright Muslims, aiding the disbelievers against the Muslims, and becoming soldiers of the disbelievers. There does not appear to be any difference of opinion amongst the scholars that it is *Harām*, and an act of apostasy.

Concerning the Muslim seeking assistance from the disbelievers against the wrongdoers, innovators, and *Bughāh*, the majority of scholars agree that this act is impermissible. There is a difference amongst them however, on whether, like in the aforementioned case it is an act of apostasy, or is rather is a Major Sin not reaching the level of disbelief.

Nevertheless, it must be understood that this ruling is in reference to the physical act itself. However, if accompanied with love and allegiance to the disbelievers, and the hope that

Chapter 26: The Ruling on Seeking Assistance from the Disbelievers in Fighting the Enemy

they will triumph over the believers, the act becomes a clear-cut act of apostacy due to the words of Allāh (5:51):

﴿وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ﴾

And whoever is an ally to them among you - then indeed, he is [one] of them.

CHAPTER 27

حكم المرجف

THE RULING REGARDING THOSE WHO SPREAD RUMOURS WEAKENING THE MORALE OF THE MUSLIMS

In the *Shari'ah*, there are two types of person that fall within this category:

- The *Murjif* (المرجف), and
- The *Mukhadhil* (المخذل)

“The *Mukhadhil* is the one that spreads fear amongst the people (i.e. the Muslims) due to his saying things like, ‘Our enemy’s numbers are great,’ ‘our horses are weak,’ ‘we do not possess the ability to confront (the enemy),’ and the likes [...]. While the *Murjif* increases panic, making statements such as, ‘the enemy are coming from such-and-such direction!’ ‘The enemy has just received reinforcements!’ ‘They have ambushes in such-and-such places!’ and their likes,” as explained by ibn an-Nuḥḥās رَحِمَهُ اللهُ in *Mashāri’ al-Ashwāq* (p.1025).⁶⁸⁹

⁶⁸⁹ Also refer to *Rawḍah at-Tālibīn* (10/240)

Chapter 27: The Ruling Regarding those who Spread Rumours Weakening the Morale of the Muslims

In short, the *Mukhadhil* is the one that spreads information designed to weaken the Muslims morale and will to fight, while the *Murjif* is close to this although slightly lesser in evil, heightening fear and panic amongst the Muslims.⁶⁹⁰

Both of these actions are from the traits and deeds of the *Munāfiqīn*, as explained by al-Qurṭubī رَحِمَهُ اللهُ in his *Tafsīr* (7/534&735) on the verses in *Sūrah al-Aḥzāb* (33:60-62):

﴿لَئِنْ لَمْ يَنْهَ الْأُنَافِقُونَ وَالَّذِينَ فِي قُلُوبِهِم مَّرَضٌ وَالْمُرْجِفُونَ فِي الْمَدِينَةِ لَنُغَرِّبَنَّكَ بِهِمْ ثُمَّ لَا يُجَاوِرُونَكَ فِيهَا إِلَّا قَلِيلًا ۖ مَلْعُونِينَ أَيْمًا تُقْفُوا أَخَذُوا وَقَتَّلُوا تَقْتِيلًا ۖ سُنَّةَ اللَّهِ فِي الَّذِينَ خَلَوْا مِنْ قَبْلُ وَلَنْ تَجِدَ لِسُنَّةِ اللَّهِ تَبْدِيلًا﴾

If the hypocrites and those in whose hearts is disease and those who spread rumours in al-Madinah do not cease, We will surely incite you against them; then they will not remain your neighbours therein except for a little. Accursed wherever they are found, [being] seized and massacred completely. [This is] the established way of Allāh with those who passed on before; and you will not find in the way of Allāh any change.

He says, “Ikrimah and others say that the *Murjifūn* in al-Madīnah are a people that would spread news to the Muslims about their enemy that would weaken them. Thus when the Messenger of Allāh ﷺ would send out a detachment they would say things like, ‘indeed they have all been killed,’ ‘they have been defeated,’ or ‘the enemy is certainly on their way towards

⁶⁹⁰ It should be noted that evidence of a deliberate intention to cause harm to the Muslims does not have to accompany this deed for its ruling and punishment (in this world) to take affect

you!’[...] It is also said, they are a group from the Muslims that convey false news due to their love of *fitnah*. Ibn ‘Abbās رَضِيَ اللَّهُ عَنْهُ said, ‘*al-Irjāf* is to spread *Fitnah* (i.e. discord).’[...] Accordingly, *al-Irjāf* is *Ḥarām* due to the harm it entails, and the verse (33:60) is evidence of the prohibition of spreading malicious rumours (amongst the Muslims).”

On the other hand, it is considered to be praiseworthy if deliberately spread amongst the disbelievers in an attempt to weaken their moral and resolve to fight, falling under what is known in today's military terminology as Psychological Operations. This is evident from the words of the Prophet ﷺ to Nu'aym رَضِيَ اللَّهُ عَنْهُ during the battle of the Trench:

إِنَّمَا أَنْتَ رَجُلٌ وَاحِدٌ فَخَذِّلْ عَنَّا مَا اسْتَطَعْتَ فَإِنَّ الْحَرْبَ خُدْعَةٌ

“Among us you are just one man, so, on our behalf, instigate betrayal (*fakhadhil*) among them if you are able to, for indeed war is deception.”⁶⁹¹

Likewise, as stated by ibn an-Nuḥḥās رَضِيَ اللَّهُ عَنْهُ in his chapter on the ‘Art of War’ in *Mashāri’ al-Ashwāq* (p.1075), “The commander should also try to slip through to the enemy’s commanders people who would encourage them to give up, or try to divide them. The commander should also try to fabricate letters or documents supposedly written by their leaders, which would weaken their soldiers, and then try to propagate these among them.”

Accordingly, those from the Muslim who deliberately spread such rumours, lies, and deception amongst the enemies, are not ruled as *Murjifīn* or *Mukhadhilīn*. Rather, they are those who are

⁶⁹¹ Refer to *al-Bidāyah wa’n-Nihāyah* (3/270), ibn Hishām’s *Sīrah an-Nabawiyyah* (pp.171-175), *Zād al-Ma’ād* (2/108), *The Noble Life of the Prophet ﷺ* (3/1377&1378), and Ibn Kathīr’s *The Life of the Prophet Muhammad: Al-Sīra al-Nabawiyyah* (3/152)

waging *Jihād* with their tongues and fulfilling their obligation in this regard.

عقوبة المرجف

THE PUNISHMENT FOR THE MURJIF

Ibn an-Nuḥḥās رَحِمَهُ اللَّهُ states in *Mashāri' al-Ashwāq* (p.1025), “The *Amīr* should prevent the *Mukhadhil* from accompanying the army, however if he is already accompanying the army he should be dismissed and sent home. If he fights, he is not entitled to anything (i.e. from the *Ghanīmah*) and if he kills a disbeliever he is likewise not entitled to his *Salb*, according to ash-Shāfi'ī and Aḥmad.” An-Nawawī رَحِمَهُ اللَّهُ was also a proponent of this view.⁶⁹²

Al-Qurṭubī رَحِمَهُ اللَّهُ states in his *Tafsīr* (4/541) of the verse in *Sūrah at-Tawbah* (9:83) wherein Allāh ﷻ says:

﴿فَإِنْ رَجَعَكَ اللَّهُ إِلَى طَائِفَةٍ مِّنْهُمْ فَاسْتَدْنُوكَ لِلْخُرُوجِ فَقُلْ لَّنْ تَخْرُجُوا مَعِيَ أَبَدًا وَلَن تُقَاتِلُوا مَعِيَ عَدُوًّا إِنَّكُمْ رَضِيتُمْ بِالْقُعُودِ أَوَّلَ مَرَّةٍ فَاقْعُدُوا مَعَ الْخَالِفِينَ﴾

If Allāh should return you to a faction of them [after the expedition] and then they ask your permission to go out [to battle], say, “You will not go out with me, ever, and you will never fight with me an enemy. Indeed, you were satisfied with sitting [at home] the first time, so sit [now] with those who stay behind.”

⁶⁹² *Rawḍah at-Ṭālibīn* (10/240), also refer to *al-Mughnī* (9/259) (7513)

“... and this indicates that the default (ruling) is that it is not permissible for the *Mukhadhil* to accompany the army on their expeditions.”

If the *Murjif* and/or *Mukhadhil* is from amongst those held back from *Jihād* due to a legitimate excuse, they forfeit their right to exemption. They are likewise considered blameworthy and sinful like the one who abandons *Jihād* without a legitimate excuse, due to their malicious behaviour. This is because of their failure to meet the conditions those who remain behind are required to fulfil so that they are absolved from blame, as stipulated in *Sūrah at-Tawbah* (9:91) wherein Allāh ﷻ says:

لَيْسَ عَلَى الضَّعَفَاءِ وَلَا عَلَى الْمَرْضَى وَلَا عَلَى الَّذِينَ لَا يَجِدُونَ مَا
يُنْفِقُونَ حَرَجٌ إِذَا انْصَحُوا لِلَّهِ وَرَسُولِهِ

There is not upon the weak or upon the ill or upon those who do not find anything to spend any discomfort [i.e., guilt] when they are sincere to Allāh and His Messenger.

Ibn Kathīr رَحِمَهُ اللَّهُ says in his *Tafsīr* (4/496), “... Upon them is no blame when they remain behind, *if* they are sincere in their state of remaining behind; not spreading false rumours and speech that discourages, instils fear, or weakens the resolve and morale of the Muslims. (Also, in addition to this) in their state (or remaining behind) they are from the *Muḥsinīn* (i.e. those of exemplary character and behaviour).”

Thus, those not fulfilling these requirements are blameworthy, and are in fact supporting the enemy in his psychological

operations⁶⁹³ against the believers - and we seek Allāh's refuge from such evil.

وسائل التواصل الاجتماعي والإرجاف

SOCIAL MEDIA AND IRJĀF

The rise of social media has been, and remains to be, somewhat of a double-edged sword for the believer. While it is true that it presents an unparalleled opportunity to engage in *Da'wah* in general, and *Jihād* with the tongue in particular, such as inciting the believers to wage *Jihād* as per Allāh's command (8:65):

﴿حَرِّضَ الْمُؤْمِنِينَ عَلَى الْقِتَالِ﴾

Incite the believers to battle.

It also presents an unparalleled opportunity to spread *Irjāf* amongst the *Ummah* in ways not possible before. Through this door, many sincere believers inadvertently play a role akin to that of the *Munāfiqīn* who spread their evil message from within the *Ummah* wherein guards are lowered and ill-suspicions are disregarded. As such, the *Ummah* witnesses many of her sons and daughters who love Allāh, His Messenger ﷺ, and *Jihād*, conveying news and commenting on global events, due to their zeal to aid the religion, in a way damages the morale of countless believers, and even *Mujāhidīn*, albeit unintentionally. Alternatively, information such as news, pictures, and videos

⁶⁹³ According to the (US) *Department of Defense Dictionary of Military and Associated Terms* (p.354) psychological warfare is defined as, "The planned use of propaganda and other psychological actions having the primary purpose of influencing the opinions, emotions, attitudes, and behavior of hostile foreign groups in such a way as to support the achievement of national objectives. Also called PSYWAR."

adversely affecting the operational security of the *Jihād* and *Mujāhidīn* is broadcasted without thought about the likely ramifications. In many instances, such media, along with its metadata,⁶⁹⁴ puts believing lives needlessly at risk, as has even resulted in the loss of wealth and lives, and has compromised countless operations. The fact that unwitting individuals from amongst the *Mujāhiīn* may have been the source of such information in no way justifies forwarding and further spreading such information. The (often mistaken) assumption that 'the enemy already knows all of this, so it's no problem for me to spread it,' also does not permit this crime to be perpetrated. Indeed, no believer would like to be responsible on the Day of Judgement for the the death, injury, and/or imprisonment of fellow believers - and we seek Allāh's refuge from this.

Amongst the greatest factors - and Allāh knows best - giving rise to this phenomenon is a lack of knowledge of the Book of Allāh and the *Sunnah* regarding *Da'wah*, *Jihād*, and *Jihād* with the tongue in particular. Like any other act of '*Ibādah*, *Da'wah* and *Jihād* with the tongue have rulings and *Sunan* prescribed by the *Sharī'ah* impermissible to ignore. Much in the same way as the *Mujāhid* carrying a weapon is required to abide by the *Sharī'ah*,

⁶⁹⁴ Metadata describes other data; it provides information about a certain item's content. For example, in image may include metadata that describes how large the picture is, the colour depth, the image resolution, when the image was captured, the GPS coordinates of where the image was captured, the device that captured the image, and other data. A text document's metadata may contain information about how long the document is, who the author is, when the document was written, the device on which the document was composed, and a short summary of the document.

Another serious problem is the rise of Geolocation software, geoprofiling and imagery analysis, that enables users, based on images (particularly their background terrain and structures), to locate the exact location of images (and possibly the time of day and year). Use of such software has enabled the enemies of Allāh to conduct air, drone, and missile strikes on battle positions, bases, training facilities, and homes of the *Mujāhidīn* - and to Allāh do we belong, and to Him do we return.

Refer to an example of the above [here](#)

the *Mujāhid* on social media is likewise required to abide by the *Sharī'ah*. Perhaps it is even more incumbent upon the *Mujāhid* on social media, as his or her actions often can have a greater impact than the bullets of the *Mujāhid* in the field. The fact that the enemies of Islām consistently prioritise the *Du'āt*⁶⁹⁵ and people of knowledge for assassination and drone strikes should be sufficient for the believer to understand the importance this field of *Jihād* carries. This is only due to them recognising and acknowledging the potential for change and influence carried via the tongues, pens, and keyboards of these believers, and Allāh ﷻ indeed knows best.

The Prophet ﷺ too recognised the potential one voice can have upon the course of a war. To the extent, that even at a time when fighting was undoubtedly an individual obligation upon every capable believer, and the very foundations of the Islāmic state was in mortal danger. He ﷺ nevertheless dispatched the new convert - Nu'aym ibn Mas'ūd رَضِيَ اللَّهُ عَنْهُ away from the front lines and towards the courts of the disbelieving coalition, his رَضِيَ اللَّهُ عَنْهُ only weapons being his guile and eloquence. In explaining the rationale that lay behind this somewhat unexpected move, the Messenger ﷺ said to Nu'aym:

إِنَّمَا أَنْتَ رَجُلٌ وَاحِدٌ فَخَذِّلْ عَنَّا مَا اسْتَطَعْتَ فَإِنَّ الْحَرْبَ خُدْعَةٌ

“Among us you are just one man, so on our behalf, instigate betrayal among them if you are able, for indeed war is deception.”⁶⁹⁶

⁶⁹⁵ Plural for *Dā'ī*; the one who calls people to Islām, or particular aspects thereof

⁶⁹⁶ Refer to *al-Bidāyah wa'n-Nihāyah* (3/270), ibn Hishām's *Sīrah an-Nabawiyyah* (pp.171-175), *Zād al-Ma'ād* (2/108), *The Noble Life of the Prophet* ﷺ (3/1377&1378), and Ibn Kathīr's *The Life of the Prophet Muhammad: Al-Sīra al-Nabawiyyah* (3/152)

Accordingly, it is incumbent upon the *Mujāhid*, whether engaged in *Jihād* with the wealth, self, or tongue, to acquire the necessary knowledge before speaking or acting. This is in accordance with the principle highlighted by *Imām* al-Bukhārī رحمه الله: “It is essential to know a thing first before saying or acting upon it.”⁶⁹⁷

Another factor contributing to this illness is being ensnared in the perilous ‘race’ to be the first to post or spread any breaking news. Although a noble intention may well lay behind such actions, in reality it betrays - and Allāh ﷻ knows best - a lack of *Taqwā* and the desire to boost one’s own profile, status, and following. This is despite the report in *Jāmi’ at-Tirmidhī: The Chapters on Righteousness and Joing the Ties on Kinship* (2012) wherein Sahl ibn Sa’d رضي الله عنه narrated the Messenger of Allāh ﷺ said:

الْأَنَاءُ مِنَ اللَّهِ وَالْعَجَلَةُ مِنَ الشَّيْطَانِ

“Moderation is from Allāh and haste is from Satan.”

In addition, al-Bukhārī رحمه الله records in *Adab al-Mufrad: Chapter of the Fault Finder* (327), that Ḥukaym ibn Sa’d رضي الله عنه said he heard ‘Alī رضي الله عنه say:

لَا تَكُونُوا عُجُلًا مَذَائِيعَ بُذُرًا

“Do not be hasty (in) spreading and divulging secrets.”

Also recorded in *Adab al-Mufrad: The Book of General Behaviour* (583), are the words:

اتَّقِ اللَّهَ وَاصْبِرْ وَلَا تَسْتَعْجِلْ

⁶⁹⁷ *Ṣaḥīḥ al-Bukhārī: The Book of Knowledge; (Chapter 10) It is Essential to Have Knowledge of a Thing Before Speaking or Acting Upon it*

Chapter 27: The Ruling Regarding those who Spread Rumours Weakening the Morale of the Muslims

“Have *Taqwā* of Allāh, have patience, and do not be hasty.” Al-Hasan remarked, “This (statement) contains all good.”

In any case, regardless of the reasons behind spreading *Irijāf* or disclosing information likely to be a source of detriment to the believers. It is a highly prohibited act often accompanied by serious consequences and is, as has been mentioned, one of the deeds of the *Munāfiqīn*.

Al-Baghawī رَحِمَهُ اللَّهُ says in his *Tafsīr* (pgs.320&321) regarding Allāh’s words (4:83):

﴿وَإِذَا جَاءَهُمْ أَمْرٌ مِّنَ الْأَمْنِ أَوِ الْخَوْفِ أَذَاعُوا بِهِ﴾

when there comes to them something [i.e., information] about [public] security or fear, they spread it around, “Meaning, the hypocrites.”

Imām Ibn Kathīr رَحِمَهُ اللَّهُ says in his *Tafsīr* (2/527) commenting on the noble verse in *Sūrah an-Nisā’* (4:83):

﴿وَإِذَا جَاءَهُمْ أَمْرٌ مِّنَ الْأَمْنِ أَوِ الْخَوْفِ أَذَاعُوا بِهِ وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولَى الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنبِطُونَهُ مِنْهُمْ وَلَوْ لَا فَضْلُ اللَّهِ عَلَيْكُمْ وَرَحْمَتُهُ لَاتَّبَعْتُمُ الشَّيْطَانَ إِلَّا قَلِيلًا﴾

And when there comes to them something [i.e., information] about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to those of authority among them, then the ones who [can] draw correct conclusions from it would have known about it. And if not for the favour of Allāh upon you and His mercy, you would have followed Satan, except for a few.

Allāh said, **when there comes to them something [i.e., information] about [public] security or fear, they spread it around**, chastising those who indulge in things before being sure of their truth, disclosing them, making them known and spreading their news, even though such news might not be true at all. In the introduction to his *Ṣaḥīḥ*, Imām Muslim recorded that Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ narrated that the Prophet ﷺ said:

كَفَى بِالْمَرْءِ كَذِبًا أَنْ يُحَدِّثَ بِكُلِّ مَا سَمِعَ

“Narrating everything one hears is sufficient to make a person a liar.”⁶⁹⁸

This is the same narration collected by Abū Dāwūd رَضِيَ اللَّهُ عَنْهُ in the section of *Adab* (manners) in his *Sunan* (4992). In the two *Ṣaḥīḥ*'s, it is recorded that Al-Mughīrah bin Shu'bah رَضِيَ اللَّهُ عَنْهُ said:

أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ قِيلَ وَقَالَ أَيُّ: الَّذِي يُكْثِرُ مِنَ الْحَدِيثِ
عَمَّا يَقُولُ النَّاسُ مِنْ غَيْرِ تَبَيَّنَ، وَلَا تَدْبُرُ، وَلَا تَبَيَّنَ

The Messenger of Allāh ﷺ prohibited, “*It was said*,” and, “*So-and-so said*.”⁶⁹⁹

This *Ḥadīth* refers to those who often convey the speech that people utter without investigating the reliability and truth of what is being disclosed. The *Ṣaḥīḥ* (Muslim) also records:

⁶⁹⁸ *Ṣaḥīḥ Muslim: Introduction, Chapter ‘The Prohibition of Narrating Everything that one Hears’ (7)*

⁶⁹⁹ In *Ṣaḥīḥ al-Bukhārī: The Book of Zakāh* (1477) Mughīrah رَضِيَ اللَّهُ عَنْهُ said that the Messenger of Allāh ﷺ said:

إِنَّ اللَّهَ كَرِهَ لَكُمْ ثَلَاثًا: قِيلَ وَقَالَ، وَإِضَاعَةَ الْمَالِ، وَكَثْرَةَ السُّؤَالِ

“Indeed, Allāh hates for you three (things): ‘He said, she said,’ squandering wealth, and excessive questioning.”

Also recorded in *Ṣaḥīḥ Muslim: The Book of Judgements* (593)

مَنْ حَدَّثَ عَنِّي بِحَدِيثٍ يَرَى أَنَّهُ كَذِبٌ فَهُوَ أَحَدُ الْكَاذِبِينَ

“Whoever narrates a *Ḥadīth* while knowing it is false is one of the two liars (i.e. the one who invents, and the one who spreads the lie).”⁷⁰⁰

Al-Qurtubī رَحِمَهُ اللَّهُ says in his *Tafsīr* (3/225&256), “The meaning is that if they hear anything regarding matters related to security, such as the Muslims victory or them killing their enemies. Or **fear**, which is the opposite (of the above), ***They spread it around***, meaning that they spread, publicise, and speak about it before verifying its authenticity [...]. Aḍ-Ḍaḥḥāk and ibn Zayd said, ‘The verse is directed at the *Munāfiqīn*, and prohibiting them when they would spread their false *Irjāf*.’ The words of Allāh the Exalted, ***But if they had referred it back to the Messenger or to those of authority among them***, mean do not speak about it nor spread it before the Prophet ﷺ first speaks about it first and announces it. Or, the people or knowledge, according to al-Ḥasan, Qatādah, and others. As-Suddī and ibn Zayd say, (it refers to) the leaders, while it is also said that it refers to the leaders of the military detachments. ***Then the ones who [can] draw correct conclusions from it would have known about it***, [...] meaning they know what (information) should be disseminated and what should be withheld.”

Shaykh ‘Abd ar-Raḥmān as-Sa’dī رَحِمَهُ اللَّهُ says in his *Tafsīr* (pgs.170&171) concerning the same verse (4:83), “This is a reproach from Allāh to His worshipers for indulging in matters unbefitting for them. Additionally, it is essential that if information comes to them concerning affairs of importance; the general benefit (of the Muslims) connected to security, the secrets of the Muslims, or that which would cause fear (which would in turn cause) a calamity to befall them. They should not be hasty, but rather be patient in broadcasting such news. Thus,

⁷⁰⁰ Also recorded in *Jāmi’ at-Tirmidhī: The Chapters on Knowledge* (2662)

they should first convey it to the Messenger ﷺ and those in authority amongst them; the people of knowledge, sound advice, intellect, and those that understand the reality and that which is of benefit, and that which is not.

Due to this Allāh says, ***then the ones who [can] draw correct conclusions from it would have known about it.*** Meaning, they will be able to derive the ***correct conclusions*** owing to their perception, sound estimation, and guided knowledge...”

He (ﷺ) continues:

﴿فَقَاتِلْ فِي سَبِيلِ اللَّهِ لَا تُكَلَّفُ إِلَّا نَفْسَكَ وَحَرِّضِ الْمُؤْمِنِينَ عَسَى اللَّهُ أَنْ يَكُفَّ بَأْسَ الَّذِينَ كَفَرُوا وَاللَّهُ أَشَدُّ بَأْسًا وَأَشَدُّ تَنكِيلًا﴾⁷⁰¹

So fight, [O Muhammad], in the cause of Allāh; you are not held responsible except for yourself. And incite the believers [to join you] that perhaps Allāh will restrain the [military] might of those who disbelieve. And Allāh is greater in might and stronger in [exemplary] punishment.⁷⁰¹

“This is the best of situations for the slave (of Allāh) - that he exerts himself fulfilling the likes of Allāh’s order to wage *Jihād* and other than it, and he (also) incites others to do the same. While it is possible the slave is prevented from one, or both of these matters and as such, it was for this reason that Allāh said to His Messenger ﷺ ***And incite the believers*** to fight. This encompasses every matter leading to the agitation of the believers and strengthening their resolve; from (spreading news of) their strengths, the weakness and failures of their enemies, that which Allāh has prepared of rewards for the fighters, and the punishments He has in store for those who remain behind.

⁷⁰¹ *Sūrah an-Nisā’* (4):84

Accordingly, this and its likes are part of inciting the believers to fight.”

The practical implementation of these verses was seen during the battle of the Trench, documented by aṣ-Ṣallābī in *The Noble Life of the Prophet ﷺ* (2/1366-1368):

The Muslims feared the worst: that Banū Quraydhah would wash their hands of their agreement with the Prophet ﷺ and that the Muslims would consequently be sandwiched between two fronts, the confederates from the north and Banū Quraydhah from the south. With sweet words and false promises, the leader of Banū an-Naḍīr convinced Ka'b ibn Asad, the leader of Banū Quraydhah, to join the confederate alliance in their war against the Muslims.

Muslims began to talk about how Banū Quraydhah had just completely gone back on their agreement with the Prophet ﷺ, but they did not know this for sure. All along, the Prophet ﷺ feared that Banū Quraydhah would betray him, which is why he appointed az-Zubayr ibn al-‘Awwām رضي الله عنه to go to Banū Quraydhah and bring back news to him about what they intended to do. Az-Zubayr رضي الله عنه went, learned as much as he could, and returned to the Prophet ﷺ and said to him, “O Messenger of Allāh, I saw them preparing their fortresses, clearing their roads (so they could easily march towards the Muslims), and gathering their livestock.”⁷⁰²

⁷⁰² Refer to *al-Maghāzī* by al-Wāqidi (2/457&458). What made their betrayal significant is that, while Madīnah was surrounded from the northern perimeter by *al-Aḥzāb* (the confederates), the Jews of Banū Quraydhah resided to the south within the city limits, thus they occupied a position to the Muslim’s rear.

All signs indicated that Banū Quraydhah had betrayed the Prophet ﷺ and joined the confederate army. But to further make sure he ﷺ was not mistaken, he sent Sa'd ibn Mu'ādh, Sa'd ibn 'Ubādah, 'Abdullāh ibn Rawāhah, and Khawwāt ibn Jubayr رَضِيَ اللَّهُ عَنْهُ, saying to them, "Go and see whether what has reached us about them is true or not. If it is true, then tell me in such a way that only I will understand what you are saying; and do not weaken the people (i.e., and do not weaken the morale of the Muslims by letting them know that Banū Quraydhah cancelled their treaty with the Muslims). But if they decide to fulfil what was agreed upon between us and them, then announce that to the people (in order to give them hope)."

The four men went and found that the rumour was true: Banū Quraydhah had indeed walked away from the treaty with the Muslims. Upon returning to the Prophet ﷺ, the four men extended their greetings of peace to him and said, "‘*Adal* and *Qārah*." Their fact-finding mission was a secret even to the Muslims, so when they spoke these words, no one really paid any close attention. But the Prophet understood fully well the implications of the words "‘*Adal* and *Qārah*," for 'Adal and Qārah were two of the tribes of Hudhhayl that had betrayed the Muslims at the Tragedy of ar-Rajī'. The Prophet therefore understood that, like 'Adal and Qārah, Banū Quraydhah had just betrayed the Muslims.⁷⁰³

Accordingly, brothers and sisters are advised; do not abandon your *Jihād* with your tongues, pens, and keyboards, for indeed this is from the most meritorious, noble, and needed forms of *Jihād*. Nevertheless, after becoming acquainted with the requisite knowledge, pause and consider a few questions before

⁷⁰³ Refer to ibn Kathīr's *The life of the Prophet Muḥammad* (3/139-143), *Tafsīr al-Qurṭbī*, the ninth verse of *Sūrah al-Aḥzāb* (7/443), and *al-Bidāyah wa'n-Nihāyah* (3/261&262)

Chapter 27: The Ruling Regarding those who Spread Rumours Weakening the Morale of the Muslims

broadcasting to the world, words that they may never be possible to retract, such as:

- Is this information permissible to convey?
- Is this information beneficial for the believers?
- Has Allāh ordered this information be conveyed to the masses?
- What are the possible ramifications of the spread of this information?
- Is there any way Satan - may Allāh curse him - can twist my words in order to harm and/or misguide the believers?
- Does the information require contextualising in light of the divine texts, in order that it be understood correctly?

By the permission of Allāh, pausing to consider such questions should help to mitigate many of the harmful consequences resultant from factors such as those mentioned throughout the chapter, and He ﷻ indeed knows best.

CHAPTER SUMMARY

The *Mukhadhil* is the one that spreads information designed to weaken the Muslims morale and will to fight, while the *Murjif* is close to this although slightly lesser in evil, heightening fear and panic amongst the Muslims. Nevertheless, both actions are from the traits and deeds of the *Munāfiqīn*.

The *Mukhadhil* and *Murjif* must be prevented from accompanying the *Mujāhidīn* due to the harm they pose to the *Jihād*, and if they do fight, they are not entitled to anything from the *Ghanīmah* of *Salb*.

With the rise of the internet in general, and social media in particular, *Irjāf* is being spread amongst the *Ummah* in an unprecedented manner that would not have been possible before.

While it is true that sincere Muslims intending nothing but good may have perpetrated much of this, the results remain the same. Consequently, brothers and sisters are urged to exercise restraint and employ due diligence as they would were they about to pull the trigger, as their words may well carry severer consequences than the ill-aimed bullet.

CHAPTER 28

حُكْمُ فِرَارٍ مِنَ الزَّحْفِ

THE RULING REGARDING FLEEING FROM BATTLE

The default (or, ‘*Azīmah*) regarding *Jihād*, is steadfastness in the face of the enemy and not fleeing from him. Allāh ﷻ commands the believers with this in *Sūrah al-Anfāl* (8:15), saying:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا زَحَفًا فَلَا تُوَلُّوهُمْ
الْأَذْبَارَ ۝١٥﴾

O you who have believed, when you meet those who disbelieve advancing [for battle], do not turn to them your backs [in flight].

He ﷻ also says later in the same *Sūrah* (8:45):

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا لَقِيتُمْ فِئَةً فَاثْبُتُوا﴾

O you who have believed, when you encounter a company [from the enemy forces], stand firm

Imām ibn Kathīr رَحِمَهُ اللَّهُ says in his *Tafsīr* (4/276), “Allāh said, while warning against fleeing from the battlefield and threatening those who do it with the Fire, ***O you who have believed, when you meet those who disbelieve advancing [for battle]***, when you get near the enemy and march towards them, ***do not turn to them your backs***. Do not run away from battle and leave your fellow Muslims behind...”

In addition, in both *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditons* (2966) and *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditons* (1742), it is narrated that the Prophet ﷺ said:

أَيُّهَا النَّاسُ، لَا تَتَمَتَّوْا لِقَاءَ الْعَدُوِّ، وَاسْأَلُوا اللَّهَ الْعَافِيَةَ، فَإِذَا لَقِيتُمُوهُمْ فَاصْبِرُوا، وَاعْلَمُوا أَنَّ الْجَنَّةَ تَحْتَ ظِلَالِ السُّيُوفِ

“O you people, do not long to meet the enemy, (rather) ask Allāh for wellbeing, however if you do meet them then be steadfast, and know that Paradise is beneath the shade of swords.”⁷⁰⁴

As such, the above verses and *Ḥadīth* establish the obligation to remain steadfast in the face of Allāh’s enemies. Nevertheless, Allāh goes on to mention three situations wherein the believer is excepted from the general rule, and thus is permitted to retreat from his enemy:

- 1) In order to manoeuvre
- 2) Retreating to another company of the believers, or their reinforcements, or

⁷⁰⁴ The narration is also recorded in *Sunan Abī Dāwūd: the Book of Jihād* (2631), *Jāmi’ at-Tirmidhī: The Chapters of Jihād* (1678), *Sunan ibn Mājah: The Book of Jihād* (2796), and *Musnad Aḥmad* (19107)

- 3) If the disbelievers outnumber the believers by more than a ratio of 2:1 (i.e. their forces are more than double the numbers of the believer's forces)

Allāh ﷻ says in *Sūrah al-Anfāl* (8:15&16):

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا زَحَفَافًا تُوَلُّوهُمْ
الْأَدْبَارَ ۝ وَمَنْ يُؤَلِّهِمْ يَوْمَئِذٍ دُبْرَهُ ۖ إِلَّا مُتَحَرِّفًا ۝﴾

*O you who have believed, when you meet those who disbelieve advancing [for battle], do not turn to them your backs [in flight]. And whoever turns his back to them on such a day, **unless swerving [as a strategy] for war***

In his *Tafsīr* (4/276) ibn Kathīr رحمه الله says regarding the verse, “Whoever flees from the enemy by way of planning to pretend that he is afraid of the enemy, so that they follow him and he takes the chance and returns to kill the enemy, then there is no sin on him. This is the explanation of Sa’īd ibn Jubayr and as-Suddī.”

This *swerving*, referred to in military terminology as *Manoeuvre*, is defined by the US military as “The employment of forces on the battlefield through movement in combination with fire, or fire potential, to achieve a position of advantage in respect to the enemy in order to accomplish the mission (JP 1-02). Manoeuvre creates and exposes enemy vulnerabilities to the massed effects of friendly combat power.”⁷⁰⁵ In other words, achieving a military advantage over the enemy by employing movement in order to expose his flank (side), rear, or supply lines to friendly attack, or threat of attack.

⁷⁰⁵ (US) FM 3-90 *Tactics* (2001)

While retreating to another company of believers or to reinforcements, termed today by the US military as a *Retrograde* operation is defined as, “A type of defensive operation that involves organized movement away from the enemy (FM 3-0). The enemy may force these operations or a commander may execute them voluntarily. In either case, the higher commander of the force executing the operation must approve the retrograde. Retrograde operations are transitional operations; they are not considered in isolation.”⁷⁰⁶

Allāh ﷻ says regarding this in *Sūrah al-Anfāl* (8:16):

﴿وَمَنْ يُؤَلِّمْ يَوْمَئِذٍ دُبُرَهُ إِلَّا مُتَحَرِّفًا لِّقِتَالٍ أَوْ مُتَحَيِّزًا إِلَىٰ فِتْنَةٍ
فَقَدْ بَاءَ بِغَضَبٍ مِّنَ اللَّهِ وَمَأْوَاهُ جَهَنَّمُ وَبِئْسَ الْمَصِيرُ﴾^(١٦)

And whoever turns his back to them on such a day, unless swerving [as a strategy] for war or joining [another] company, has certainly returned with anger [upon him] from Allāh, and his refuge is Hell - and wretched is the destination.

Ibn Kathīr رَحِمَهُ اللَّهُ (4/276) comments on this saying, “... aḍ-Ḍaḥḥāk also commented, ‘Whoever went ahead of his fellow Muslims to investigate the strength of the enemy and make use of it *or joining [another] company*, meaning he leaves from here to another troop of Muslims to assist them, or be assisted by them. So that is allowed for him or even during the battle if he flees from his brigade to the commander. Alternatively, going to the *Imām*, would also fall under this permission.’”

An example from the era of the Prophet ﷺ can be seen when, after the Muslims' retreat from the battle of Mu'tah, the children and people of al-Madīnah came out to meet the returning army by throwing dirt at them and taunting them saying, “O you who

⁷⁰⁶ *ibid.*

flee! You fled from fighting in the Cause of Allāh!” To which the Prophet ﷺ responded by saying:

لَيْسُوا بِالْفَرَارِ وَلَكِنَّهُمْ الْكُرَارُ إِنْ شَاءَ اللَّهُ عَزَّوَجَلَّ

“They are not people who fled! Rather, they are a people who have turned around only to resume fighting later on, if Allāh ﷻ wills.”⁷⁰⁷

Aḥmad رحمه الله reports a similar incident in his *Musnad*: *Musnad ‘Abdullāh ibn ‘Umar* رضي الله عنه (5384):

عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: كُنْتُ فِي سَرِيَّةٍ مِنْ سَرَايَا رَسُولِ اللَّهِ ﷺ فَحَاصَ النَّاسُ حَيْصَةً، وَكُنْتُ فِي مَنْ حَاصَ فَقُلْنَا: كَيْفَ نَصْنَعُ؟ وَقَدْ فَرَرْنَا مِنَ الرَّحْفِ، وَبُؤْنَا بِالْعَضْبِ، ثُمَّ قُلْنَا: لَوْ دَخَلْنَا الْمَدِينَةَ فَبِتْنَا، ثُمَّ قُلْنَا: لَوْ عَرَضْنَا أَنْفُسَنَا عَلَى رَسُولِ اللَّهِ ﷺ، فَإِنْ كَانَتْ لَهُ تَوْبَةٌ، وَإِلَّا ذَهَبْنَا فَأَتَيْنَاهُ قَبْلَ صَلَاةِ الْعَدَاةِ فَخَرَجَ، فَقَالَ: مَنْ الْقَوْمُ؟ قَالَ: فَقُلْنَا: نَحْنُ الْفَرَارُونَ، قَالَ: لَا بَلْ أَنْتُمْ الْعَكَارُونَ، أَنَا فِتْنَتُكُمْ وَأَنَا فِتْنَةُ الْمُسْلِمِينَ قَالَ: فَأَتَيْنَاهُ حَتَّى قَبَلْنَا يَدَهُ

‘Abdullāh ibn ‘Umar said, “I was in a detachment from the detachments of the Messenger of Allāh ﷺ and the people fled, and I was amongst those who retreated. We said (to one another), ‘What should we do? We have fled from battle, and have returned with (Allāh’s) Anger.’ Then we said, ‘If we enter al-Madīnah, then we would have.’ Then we said, ‘If we present ourselves to the Messenger of Allāh then maybe there will be repentance.’ So we went to him and arrived before the morning prayer, then he came out and inquired, ‘Who are you people?’

⁷⁰⁷ *Al-Bidāyah wa’n-Nihāyah* (3/435). Ibn Kathīr narrates this incident from ibn Ishāq but says about it, “This narration is *Mursal* and contains some strangeness in it.”

We said, 'We are the ones who fled,' however he replied, 'No, rather you are those who will return (to fight another day). I am your company, and I am the company for every Muslim.' So we went to him until we all kissed his hand."⁷⁰⁸

Ibn Kathīr continues speaking about the verse (8:16), "'Umar ibn al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ said about Abū 'Ubayd رَضِيَ اللَّهُ عَنْهُ when he was fighting on the bridge in the land of the Persians,"⁷⁰⁹ because of the many Zoroastrian soldiers:

لَوْ أَنَحَا زَإِلَيَّ لَكُنْتُ لَهُ فِئَةً

'If he would have retreated to me, I would have indeed been a company for him.'

This is how it was reported by Muḥammad bin Sīrīn from 'Umar. In the report of Abū 'Uthmān an-Nahdī from 'Umar, he said: When Abū 'Ubayd was fighting, 'Umar said:

أَيُّهَا النَّاسُ أَنَا فِئَتُكُمْ

'O people! I am your company.'

Mujāhid said that 'Umar said, 'We are the company of every Muslim.' 'Abd al-Mālik ibn 'Umayr reported from 'Umar:

أَيُّهَا النَّاسُ لَا تَغُرَّتْكُمْ هَذِهِ الْآيَةُ فَإِنَّمَا كَانَتْ يَوْمَ بَدْرٍ وَأَنَا فِئَةٌ لِكُلِّ مُسْلِمٍ

"O people! Do not be confused over this verse, it was only about the day of Badr, and we are a company for every Muslim.'

⁷⁰⁸ Shaykh Aḥmad Shākir said in his verification of *Musnad Aḥmad*, "Its *Isnād* is *Ṣaḥīḥ*."

⁷⁰⁹ This battle took place in the year 13 *Hijrī* and was nicknamed 'the Battle of the Bridge.' For an account to the battle refer to aṣ-Ṣallābī's, *'Umar ibn al-Khaṭṭāb; His Life and Times* (2/126-132)

Ibn Abī Ḥātim recorded that Nāfi' questioned ibn 'Umar, 'We are people who are not stationary when fighting our enemy, and we may not know where our troop is, be it that of our *Imām* or our army.' So he replied, 'The company is the Messenger of Allāh ﷺ.' I said, 'But Allāh said, ***O you who have believed, when you meet those who disbelieve advancing [for battle],*** to the end of the verse . So he said; 'This verse was about Badr, not before it nor after it.' Aḍ-Ḍaḥḥāk commented that Allāh's statement, ***or joining [another] company***, refers to 'Those who retreat to the Messenger of Allāh and his Companions (when the Messenger was alive ﷺ), and those who retreat in the present time to his commander or companions.' However, if one flees for any other reason than those mentioned here, then it is prohibited and considered a major sin..."

Examples of this were many during the lifetime of the Prophet ﷺ and his Companions رَضِيَ اللَّهُ عَنْهُمْ, assuming various forms:

- a) In practically all of the Prophet's ﷺ expeditions against the disbelievers, after the completion of the operation the Muslims retreated back to their base and capital in al-Madīnah. The examples of this type are well known and too many to mention.⁷¹⁰
- b) During most of the battles which spanned over a number of days, such as al-Mu'tah, al-Yarmūk, and al-Qādisiyyah, the two armies would set camp, array their ranks for battle, fight for most of the day (and sometimes even the night), then break contact and return to their respective camps in preparation for the following day's combat.

⁷¹⁰ Ibn an-Nuḥḥās mentions in *Mashāri' al-Ashwāq* (p.844) that the Prophet ﷺ participated in 27 battles during his lifetime, and dispatched a total of 56 detachments (pp.896-908) led by commanders from amongst the Companions رَضِيَ اللَّهُ عَنْهُمْ

- c) In the battles in which the Muslims were unable to destroy their opponents on the battlefield, they would break contact and return to al-Madinah, or their nearest garrison. During the lifetime of the Prophet ﷺ perhaps the most clear example of this was the retreat of the Muslims led by Khālīd, the Sword of Allāh رَضِيَ اللَّهُ عَنْهُ, after the battle of al-Mu'tah. While during the caliphate of 'Umar ibn al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ, the battle of the Bridge was a notable example, wherein 'Umar would lament regarding the fallen *Amīr*, Abū 'Ubayd رَضِيَ اللَّهُ عَنْهُ, and the catastrophe that would befall the Muslims on that day:

لَوْ اِنْحَاَزَ اِلَيَّ لَكُنْتُ لَهُ فِتْنَةً

“If he would have retreated to me then I would have indeed been a company for him.”⁷¹¹

Another example was the ordered retreat of all of the Muslim forces in *Shām* to the plain of Yarmouk (in present-day Jordan) in order to consolidate their forces and find suitable terrain for battle, setting the stage for the decisive battle of Yarmouk.⁷¹²

As for the situation in which the disbelievers outnumber the believers by a ratio of more than 2:1 (i.e. their forces are more than double the numbers of the believer's forces), Allāh in His infinite mercy and wisdom has given the believers the concession (*Rukhṣah*) of retreating if they wish. He says in *Sūrah al-Anfāl* (8:75&76):

﴿يَا أَيُّهَا النَّبِيُّ حَرِّضِ الْمُؤْمِنِينَ عَلَى الْقِتَالِ إِنْ يَكُنْ مِنْكُمْ عِشْرُونَ صَابِرُونَ يَغْلِبُوا مِائَتَيْنِ وَإِنْ يَكُنْ مِنْكُمْ مِائَةٌ يَغْلِبُوا

⁷¹¹ Refer to *Tafsīr ibn Kathīr* (4/276)

⁷¹² Refer to *Sword of Allāh: Khalid bin al-Waleed* (pp.388-418) for an account of this battle

أَلْفًا مِّنَ الَّذِينَ كَفَرُوا بِأَنَّهُمْ قَوْمٌ لَا يَفْقَهُونَ ﴿٦٥﴾ أَكُنْ خَفَافًا
عَنكُمْ وَعَلِمَ أَنَّ فِيكُمْ ضَعْفًا فَإِن يَكُن مِّنكُمْ مِائَةٌ صَابِرَةٌ
يَغْلِبُوا مِائَتَيْنِ وَإِن يَكُن مِّنكُمْ أَلْفٌ يَغْلِبُوا أَلْفَيْنِ بِإِذْنِ اللَّهِ
وَاللَّهُ مَعَ الصَّابِرِينَ ﴿٦٦﴾

O Prophet, urge the believers to battle. If there are among you twenty [who are] steadfast, they will overcome two hundred. And if there are among you one hundred [who are] steadfast, they will overcome a thousand of those who have disbelieved because they are a people who do not understand. Now, Allāh has lightened [the hardship] for you, and He knows that among you is weakness. So if there are from you one hundred [who are] steadfast, they will overcome two hundred. And if there are among you a thousand, they will overcome two thousand by permission of Allāh. And Allāh is with the steadfast.

In *al-Muṣannaḥ* ibn Abī Shaybah: *Kitāb as-Siyar* (33690):

حَدَّثَنَا وَكِيعٌ، قَالَ ثنا حَسَنُ بْنُ صَالِحٍ، عَنِ ابْنِ أَبِي ذَنْبٍ، عَنْ عَطَاءٍ،
عَنِ ابْنِ عَبَّاسٍ، قَالَ: مَنْ فَرَّ مِنْ ثَلَاثَةٍ فَلَمْ يَفِرَّ، وَمَنْ فَرَّ مِنْ اثْنَيْنِ فَقَدْ
فَرَّ يَعْنِي مِنَ الرَّحْفِ

It is reported that ibn ‘Abbās رَضِيَ اللَّهُ عَنْهُمَا said, “Whoever flees from three has not fled, while whoever flees from two has indeed fled from battle.”⁷¹³

⁷¹³ Also in at-Ṭabarānī’s *Mu’jam al-Kabīr* (11151)

Al-Qurtubī رحمته الله says in his *Tafsīr* (4/327), “As long as the enemy is more than twice the number of the Muslims they can retreat, nevertheless remaining steadfast and fighting is better.”

Most of the classical scholars have similar statements regarding this verse and as such, there is no need to repeat their statements here. However, Shaykh ‘Abd ar-Raḥmān as-Sa’dī رحمته الله holds that Allāh’s statement, *So if there are from you one hundred [who are] steadfast*, is qualified by the words, *[who are] steadfast*.

He says in his *Tafsīr* (p.303), “Then Allāh lightened (their burden), so it became impermissible for the Muslims to flee from the disbelievers numbering twice their number. However, if they (i.e. the disbelievers) are more than twice the number of the Muslims it is permissible for them to retreat; although this is dependent on two matters [...]. Secondly, this number is constrained by them (i.e. the Muslims) being steadfast (meaning) them being trained in patience and steadfastness. It can be understood from this that if they are not ‘steadfast’, then it becomes permissible for them to flee, even if from a force of less than twice their number [if they overwhelmingly expect that steadfastness will result in (great) harm befalling them]... (thus) encouraging them to be steadfast, and that it is a must that you take the necessary and obligatory steps to achieve this, [therefore if they do so, then this will become both faith-based and physical steps paving the way to what Allāh has informed (the believers) of victory (even) with their small numbers].”

Accordingly, it is possible to understand that the factors of being from the steadfast are strength of faith, training, and capability, as ‘there is no responsibility without capability.’ Thus, if the Muslims that are fighting in the cause of Allāh understand its meanings and implications, are trained to fight, and have the necessary equipment to fight, then they are bound by the ruling of the verse in *Sūrah al-Anfāl* (8:66).

Ibn an-Nuḥḥās رَحِمَهُ اللهُ likewise mentions in *Mashāri’ al-Ashwāq* (p.572) that ibn Mājushūn رَحِمَهُ اللهُ held that the enemy ‘numbers’ are not restricted to numerical numbers, rather their weaponry and the like is also taken into account. Similar statements have also been reported from Mālik رَحِمَهُ اللهُ, and this was also known to be the preference of ibn Ḥabīb رَحِمَهُ اللهُ.⁷¹⁴

This is particularly relevant to today’s situation, as often viewing the deciding factor of whether retreat is permissible based solely on the numeric ratio of the disbelievers to believers results in an incomplete and often misleading picture. This is understood further, when one considers the impact of modern technology on combat, especially as it relates to weaponry. As such, it is known that particular weapon systems dramatically multiply combat effectiveness and capability. This has lead a number of contemporary scholars, such as Shaykh Abū Yaḥyā al-Lībī رَحِمَهُ اللهُ, to conclude as did a number of their predecessors, that the overriding consideration today should be given to combat power (and effectiveness),⁷¹⁵ and not the number of fighters on either side. As such, if the enemy’s combat power is more than double that of the *Mujāhidīn*’s, as determined by the people of knowledge and experience in the field, it becomes permissible for the believers to retreat. Although, if this is not the case, then anyone who flees in such a situation whilst having the ability to fight has fallen into one of the seven major destructive sins (*al-Mūbiqāt*),⁷¹⁶ even if the numbers of the enemy are more than

⁷¹⁴ Refer to *al-Injād* (pgs.150&151)

⁷¹⁵ According to the (US) *Department of Defense Dictionary of Military and Associated Terms* (2002), combat power is defined as, “(*) The total means of destructive and/or disruptive force which a military unit/formation can apply against the opponent at a given time.”

⁷¹⁶ In *Ṣaḥīḥ al-Bukhārī: The Book of Wills and Testaments* (2766) and *Ṣaḥīḥ Muslim: The Book of Faith* (89), Abū Hurayrah رَضِيَ اللهُ عَنْهُ narrates that the Prophet ﷺ said:

twice that of the *Mujāhidīn*. This indeed appears to be the sounder opinion, especially when one considers the reasoning behind the concession, and Allāh ﷻ surely knows best.

Another factor worthy of consideration in order to obtain a true representation of reality is the enemy's combat power and effectiveness in relation to the believers' ability to withstand their fires, and vice versa. For example, a fighter with no cover fares very differently to one fighting from within an armoured vehicle or fortified battle position. As such, it would be contrary to reason that one would hold both to the same standards in the instance of retreat. It is true that, upon retreat, the first may be sinful on account of not making the necessary preparations required for him to withstand the enemy's assault whilst possessing the ability to do so. However, being sinful on account of his retreat may be something, if he was not responsible for his lack of adequate preparation, he is absolved from, and Allāh ﷻ knows best.

The only other exception to steadfastness and continuing to fight in the face of a much larger, or more powerful enemy force is as has been stated by scholars such as ibn an-Nuḥḥās رَحِمَهُ اللَّهُ. He comments in *Mashāri' al-Ashwāq* (p.573), "A number of the scholars hold the opinion that it is permissible for the Muslims to retreat from the disbelievers if they are more than twice their number on the condition that the Muslims are less than twelve

اجْتَنِبُوا السَّبْعَ الْمُؤْبَقَاتِ، قَالُوا: يَا رَسُولَ اللَّهِ وَمَا هُنَّ؟ قَالَ: الشَّرْكُ بِاللَّهِ،
وَالسَّحَرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ الرِّبَا، وَأَكْلُ مَالِ الْيَتِيمِ،
وَالتَّوَلَّى يَوْمَ الرَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ الْغَافِلَاتِ

"Avoid the seven great destructive sins." The people enquired, "O Messenger of Allāh what are they?" He said, "To join others in worship with Allāh, magic, to take a life which Allāh has forbidden except for a just cause, dealing in usury, to consume the wealth of an orphan (unjustly), to flee from the enemy, and to accuse the chaste innocent believing women of fornication."

thousand. However, if there numbers reach twelve thousand it is not permissible for them to retreat.”

This was according to the *Ḥadīth* recorded in *Sunan Abī Dāwūd: The Book of Jihād* (2611) wherein the Prophet ﷺ was reported to have said:

لَنْ يُغْلَبَ اثْنَا عَشَرَ أَلْفًا مِنْ قَلَّةٍ

“An (army) of twelve thousand would never be defeated due to a lack of numbers.”⁷¹⁷

In addition to this, *Shaykh al-Islām* ibn Taymiyyah رَحِمَهُ اللهُ mentions in *Qā'idah fi'l-Inghimās al-'Adū* (pgs.56&57), “If the Muslims are the attackers, it is not *Wājib* upon them to stand and fight (an enemy) exceeding twice their number. However, if they are the ones under attack and are fighting in self-defence; it is *Wājib* upon them to remain patient (and not retreat), as it was likewise (*Wājib* to remain steadfast) on the days of Uhud and al-Khandaq, when the enemy was multiple times larger (than the Muslims).

⁷¹⁷ Also reported by at-Tirmidhī in his *Jāmi'*: *Chapters on the Expeditions of the Messenger of Allāh* ﷺ (1555) and *Musnad Aḥmad: Musnad Banī Hāshim* (2682). A number of scholars have casted doubt regarding the authenticity of this narration. However, ad-Dārimī reports with a *Ḥasan* (acceptable) *Isnād* a slightly different wording in his *Sunan: Kitāb as-Siyar* (2482): “An army of twelve thousand who is patient and truthful will not be defeated due to a lack of numbers.” Nevertheless, it should be noted that regardless of any differences scholars have regarding the authenticity of this narration, the vast majority agree that it is to be acted upon. This is not something strange, as there are a number of *Da'īf* (weak) narrations that the scholars agree upon the correctness of their meaning and the necessity acting upon them. An example of this type of narration is that which was recoded by al-Bayhaqī:

إِنَّ الْمَاءَ طَهُورٌ إِلَّا إِنْ تَغَيَّرَ رِيحُهُ أَوْ لَوْنُهُ أَوْ طَعْمُهُ بِنَجَاسَةٍ تَحْدُثُ فِيهِ

“Indeed water is pure, except if its smell, coulour, or taste changes due to an impurity that has polluted it.”

Regarding it, ash-Shawkānī records in *Nayl al-Awṭār* (1/45) that a number of scholars, such as al-Bayhaqī, ash-Shāfi'ī, ibn al-Mundhir, and al-Mahdī, have transmitted an *Ijmā'* that it is to be acted upon.

(This is understood) according to that which is evident and well known concerning Allāh's criticism in *Sūrah Āl 'Imrān*⁷¹⁸ of those who fled on the day of Uhud, and in *Sūrah al-Aḥzāb* those who turned away from fighting on the day of al-Khandaq.⁷¹⁹

Here, ibn Taymiyyah illustrates the fact that Allāh blamed those who fled during the two battles despite *al-Anfāl*'s (8:66) revelation occurring after the battle of Badr, which preceded the two battles chronologically. Since Allāh ﷻ had already given the permission for the Muslims to retreat from enemy numbers greater than twice their size, the only conclusion plausible is that the permission applied unrestrictedly only to offensive operations, whilst defensive engagements were exempt from the ruling.

⁷¹⁸ Allāh said about this incident in *Sūrah Āl 'Imrān* (3:155):

﴿إِنَّ الَّذِينَ تَوَلَّوْا مِنْكُمْ يَوْمَ الْتَقَى الْجَمْعَانِ إِنَّمَا اسْتَزَلَّهُمُ الشَّيْطَانُ بِبَعْضِ مَا كَسَبُوا وَلَقَدْ عَفَا اللَّهُ عَنْهُمْ إِنَّ اللَّهَ غَفُورٌ حَلِيمٌ﴾⁽¹⁵⁵⁾

Indeed, those of you who turned back on the day the two armies met [at Uhud] - it was Satan who caused them to slip because of some [blame] they had earned. But Allāh has already forgiven them. Indeed, Allāh is Forgiving and Forbearing.

⁷¹⁹ Allāh said about this incident in *Sūrah al-Aḥzāb* (33:13):

﴿وَإِذْ قَالَتْ طَائِفَةٌ مِنْهُمْ يَا أَهْلَ يَثْرِبَ لَا مُقَامَ لَكُمْ فَارْجِعُوا وَيَسْتَأْذِنُ فَرِيقٌ مِنْهُمُ النَّبِيَّ يَقُولُونَ إِنَّ بُيُوتَنَا عَوْرَةٌ وَمَا هِيَ بِعَوْرَةٍ إِنْ يُرِيدُونَ إِلَّا فِرَارًا﴾⁽¹³⁾

And when a faction of them said, "O people of Yathrib, there is no stability for you [here], so return [home]." And a party of them asked permission of the Prophet, saying, "Indeed, our houses are exposed [i.e., unprotected], while they were not exposed. They did not intend except to flee.

اعتبارات أخرى

FURTHER CONSIDERATIONS

In his *Tafsīr* (3/1385) Shaykh ‘Abd al-‘Azīz at-Ṭarīfī - may Allāh keep him steadfast and hasten his escape - says, “It is not permissible for a group to retreat to another company whilst abandoning another alone to be killed the enemy,” echoing the earlier words of ibn Kathīr رَحِمَهُ اللَّهُ. He said, “Do not run away and leave your fellow Muslims behind.” As such, if any groups that are fighting alongside, or in coordination with others, and especially if they are mutually supporting each other, wish to retreat they must inform the other(s) before they leave them unaware and possibly exposed to unexpected enemy attack. Failing to do so is to perpetrate one of the worst types of treachery. Allāh ﷻ says in *Sūrah al-Anfāl* (8:27):

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمْنَكُمْ وَأَنفُسَكُمْ وَأَنْتُمْ تَعَاوَنُونَ﴾

O you who have believed, do not betray Allāh and the Messenger or betray your trusts while you know [the consequence].

And (8:58):

﴿إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ﴾

Indeed, Allāh does not like traitors.

According to the understanding and opinions of the *Salaf*, it is possible divide the ruling regarding retreat into three categories:

- 1) It is *Mustahab* (recommended), as in the case of the Muslims being greatly outnumbered and/or outgunned and unable to inflict harm upon the enemy, rather they themselves will likely be destroyed or captured by the enemy.
- 2) It is *Mubāḥ* (permissible), as in the case wherein the Muslims are outnumbered and/or outgunned by more than a ration of 2:1 (i.e. double), and they suspect that if they remain steadfast they will likely be destroyed without being able to inflict much harm upon the enemy.
- 3) It is disliked (*Makrūh*) if the Muslims are outnumbered and/or outgunned by more than double, however they overwhelmingly feel that if they remain steadfast they can achieve victory, or inflict devastating losses upon the enemy.

However, since obedience to the *Amīr* is *Wājib*, unless he commands *Munkar* (sin), his permission must be sought before any individuals or groups conduct any retreat from their assigned positions, or area(s) of operations. This is evident in Allāh's words in *Sūrah an-Nisā'* (4:59):

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ﴾

O you who have believed, obey Allāh and obey the Messenger and those in authority among you.

As can be understood from the rulings of a number of the earlier scholars; in situations wherein the Muslims are planning to retreat, it is also not permissible to leave behind anything which may be of benefit to the disbelievers, if they are capable of taking it with them. If they are not, provisions should be made to destroy any weapons, supplies, and other equipment in order to

prevent it from falling into enemy hands.⁷²⁰ Ibn Ḥazm رَحِمَهُ اللَّهُ states in al-Muḥallā (7/574), “And to sell to them (i.e. the disbelievers) is permissible, except that which would strengthen them against the Muslims such as transportation, weapons, iron, or other than these. Therefore, it is not permissible to sell them any of these types of things [...] as the Exalted has said:

﴿وَلَا تَعَاوُنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ﴾

*do not cooperate in sin and aggression.*⁷²¹

Thus, it is *Harām* to strengthen them against the Muslims by selling (these things) to them, or by other means than this.” Consequently, leaving them to capture such things whilst having the ability to prevent this is more worthy of this prohibition, and Allāh ﷻ knows best.

Lastly, scholars have included anyone who abandons *Jihād* whilst having the ability to perform it under the threat of the verse (8:16):

﴿وَمَنْ يُؤَلِّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلَّا مُتَحَرِّفًا لِقِتَالٍ أَوْ مُتَحَيِّزًا إِلَى فِئَةٍ فَقَدْ بَاءَ بِغَضَبٍ مِّنَ اللَّهِ وَمَأْوَاهُ جَهَنَّمُ وَيُسَّرُّ الْمَصِيرُ﴾ (١٦)

And whoever turns his back to them on such a day, unless swerving [as a strategy] for war or joining [another] company, has certainly returned with anger [upon him] from Allāh, and his refuge is Hell - and wretched is the destination.

⁷²⁰ A possible exception to this is the situation wherein the Muslims overwhelmingly believe that they will be able to recapture it within a short period. Another may be that they deliberately leave it for the enemy after having booby-trapped it.

⁷²¹ *Sūrah al-Mā'idah* (5):2

In fact, those guilty of this crime are most worthy of this verse applying to them, as they did not just flee from one or two battles; rather they have fled, with their deliberate inaction, from *Jihād* in its entirety - a global *Jihād* mandatory upon every able-bodied believer.

*We ask Allāh to give us the ability to wage Jihād as it ought to be waged, and pour upon us patience and plant firmly our feet and give us victory over the disbelieving people.*⁷²²

⁷²² In reference to the supplication the companions of Ṭālūt made before battle that Allāh mentions in *Sūrah al-Baqarah* (2:249&250):

﴿قَالَ الَّذِينَ يَظُنُّونَ أَنَّهُمْ مُلَاقُوا اللَّهَ كَمِنْ فَعَةٍ قَلِيلَةٍ غَلَبَتْ فَعَةٌ كَثِيرَةٌ بِإِذْنِ اللَّهِ وَاللَّهُ مَعَ الصَّابِرِينَ ۝ وَلَمَّا بَرَزُوا لِجَالُوتَ وَجُنُودِهِ قَالُوا رَبَّنَا أَفْرِغْ عَلَيْنَا صَبْرًا وَثَبِّتْ أَقْدَامَنَا وَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ ۝﴾

But those who were certain that they would meet Allāh said, "How many a small company has overcome a large company by permission of Allāh. And Allāh is with the patient." And when they went forth to [face] Goliath and his soldiers, they said, "Our Lord, pour upon us patience and plant firmly our feet and give us victory over the disbelieving people."

CHAPTER SUMMARY

The default (or, '*Azīmah*) regarding *Jihād*, is steadfastness in the face of the enemy and not fleeing from him and thereby incurring Allāh's Wrath.

Allāh mentions three exceptions to the above:

- 1) Retreating in order to manoeuvre
- 2) Retreating to another company of the believers, or their reinforcements
- 3) Retreating if the disbelievers have more than double the believers strength and combat power

According to the understanding and opinions of the *Salaf*, it is possible divide the ruling regarding retreat into three categories:

- 1) It is *Mustahab*, as in the case of the Muslims being greatly outnumbered and/or outgunned and unable to inflict harm upon the enemy, rather they themselves will likely be destroyed or captured by the enemy.
- 2) It is *Mubāh*, as in the case wherein the Muslims are outnumbered and/or outgunned by more than a ration of 2:1 (i.e. double) and they suspect that if they remain steadfast they will likely be destroyed without being able to inflict much harm upon the enemy.
- 3) It is *Makrūh* (disliked) if the Muslims are outnumbered and/or outgunned by more than double, however they overwhelmingly feel that if they are steadfast they can achieve victory or inflict devastating losses upon the enemy.

However, according to scholars such as ibn Taymiyyah, if the Muslims are under attack and are fighting in self-defence, it is *Wājib* upon them to remain patient (and not retreat) like it was on the days of Uḥud and al-Khandaq, even though the enemy was multiple times larger than the Muslims.

CHAPTER 29

عمليات اختراقى

INFILTRATION OPERATIONS

The focus of this chapter is not on so-called long term strategies aimed at gaining control of, or influencing the disbelievers institutions from within in order to bring about a benefit for Islām, as some contemporary Islamic movements promote. Such actions lack any precedent or evidence demonstrating their permissibility, and as such, must be discounted as innovative practices. Rather, the chapter is focused on those operations that involve infiltrating, or embedding within the enemy's ranks in order to achieve a benefit for the Muslim *Ummah* in her *Jihād*. In the contemporary setting, such operations would likely involve *Mujāhidīn* infiltrating the disbelievers' or apostates' military, security, or political institutions. This would usually be in order to spy, gain specific skills or expertise unavailable elsewhere, or for performing 'insider' attacks.

During the lifetime of the Prophet ﷺ there were a number of such operations carried out as per his command ﷺ, such as the operations of:

- al-‘Abbās رَضِيَ اللَّهُ عَنْهُ
- Nu’aym ibn Mas’ūd رَضِيَ اللَّهُ عَنْهُ, and
- Ḥudhayfah ibn Yamān رَضِيَ اللَّهُ عَنْهُ

In his biography of the Prophet ﷺ (2/1023), aṣ-Ṣallābī recounts that after al-‘Abbās رَضِيَ اللَّهُ عَنْهُ, the uncle of the Prophet ﷺ, “Having paid the ransom money that was demanded of him, al-‘Abbās رَضِيَ اللَّهُ عَنْهُ returned to Makkah but continued to keep secret the fact that he had embraced Islām.⁷²³ With amazing skill and discretion, al-‘Abbās رَضِيَ اللَّهُ عَنْهُ then continued for the next number of years to gather sensitive intelligence about the Quraysh and convey it to the Prophet ﷺ in al-Madīnah. His role as an intelligence agent for the Muslims ended with the conquest of Makkah; in fact, it was only a few hours before the actual conquest that he openly proclaimed himself to be a Muslim.” This account is further strengthened by the narration reported in *Musnad Aḥmad* concerning the incident of al-Ḥajjāj ibn ‘Illāṭ رَضِيَ اللَّهُ عَنْهُ. In it, it states that he travelled to Makkah in order to recover wealth he had left there, and once there, he met al-‘Abbās رَضِيَ اللَّهُ عَنْهُ in private and updated him regarding the news of the Muslims’ recent conquest of Khaybar.⁷²⁴

In these accounts is an example of an infiltration operation wherein the believing operative resides in *Dār al-Ḥarb* for an extended period in order to bring about a benefit for Islām and the *Jihād*. In the above example, al-‘Abbās along with his believing wife, Umm al-Faḍl رَضِيَ اللَّهُ عَنْهَا, remained in Makkah between the battle the Badr, which took place in the second year

⁷²³ Ibn Kathīr narrates this incident in *al-Bidāyah wa’n-Nihāyah* (3/74), his *Tafsīr* (4/357-359), and also in *The Life of the Prophet Muḥammad* (2/309&310)

⁷²⁴ Refer to *Musnad Aḥmad: Musnad Anas ibn Mālik رَضِيَ اللَّهُ عَنْهُ* (12409)

Hijrī, and the Conquest of Makkah in the eighth year *Hijrī*. Thus, he acted as a spy and collected intelligence on behalf of the Prophet ﷺ, and kept correspondence with him for a period in excess of five years.

It is reported that he would correspond with the Messenger of Allāh ﷺ, informing him of the disposition and movements of the Quraysh. It is also plausible - and Allāh knows best - that he ﷺ had other Muslim spies operating throughout the peninsula and as such, he was aware of the movements and routes the Qurayshī trade caravans would take as they traversed the desert. He ﷺ would then dispatch raiding parties to intercept these moving enemy targets. He ﷺ would also receive intelligence regarding enemy intentions and preparations to attack the Muslims, such as the reports he ﷺ received prior to the battles of Uḥud, Dhāt ar-Riqāʿ, Banī al-Muṣṭliq, al-Khandaq, Ḥunayn, and at-Tabūk. The mobilisation of Khālīd ibn Sufyān, whose story is recorded in Chapter 32 (pp.716-718), is yet another example in this regard.

During the battle of the Trench, ibn Qayyim رَحْمَةُ اللَّهِ عَلَيْهِ recounts in *Zād al-Maʿād* (2/108) that Nuʾaym ibn Masʿūd al-Asjaʿī رَضِيَ اللَّهُ عَنْهُ snuck through to the Prophet ﷺ announcing his Islām and said, “O Messenger of Allāh, my people do not know that I have become a Muslim, so command me however you wish.” The Prophet ﷺ replied, knowing Nuʾaym was from the tribe of Ghatafān and a personal ally to both the tribes of Quraysh and the Jews of Banī Quraydhah, “Among us you are just one man, so on our behalf instigate betrayal among them if you are able, for indeed war is deception.”⁷²⁵ Nuʾaym then proceeded, whilst concealing his new found faith, to alternate between the camps of the Quraysh and the Jews instigating them against one another and sowing seeds of suspicion, distrust, and discord amidst them.

⁷²⁵ Refer to *al-Bidāyah wa'n-Nihāyah* (3/270), *as-Sīrah an-Nabawīyyah aṣ-Ṣaḥīḥah* (2/430), *The Noble Life of the Prophet ﷺ* (3/1377&1378), and Ibn Kathīr's *The Life of the Prophet Muhammad: Al-Sīrah al-Nabawīyyah* (3/152)

This, by the permission of Allāh ﷻ, was one of the major factors leading to the fragmentation and eventual disintegration of their evil coalition, followed by them lifting the month-long siege on the Muslims in al-Madīnah.⁷²⁶

Thus, “The *Amīr* of the army needs to send out spies before battle. These spies should infiltrate the enemy’s army and study them: Study the quantity and quality of their weaponry and equipment, survey their numbers, learn about their leaders and champions, and learn their strategies and plans.

The *Amīr* should also try to slip through to the enemy’s commanders people who would encourage them to give up, or try to divide them. The commander should also try to fabricate letters or documents supposedly written by their leaders, which would weaken their soldiers, and then try to spread these among them.

The *Amīr* should spend great amounts of money on intelligence. He should not hold back on spending in this area because if he wins than what he spend was indeed well spent, and if he loses than whatever wealth he held back would be worthless in the case of loss. Plus, expending money is better than expending Muslim souls on the battleground,” as was stated by ibn an-Nuḥḥās رَحِمَهُ اللَّهُ in *Mashāri’ al-Ashwāq* (pgs.1075&1076).

Shortly after Nu’aym رَحِمَهُ اللَّهُ succeeded in planting and cultivating the seeds of discord amongst the disbelieving confederates, the Messenger of Allāh ﷺ sent Hudhayfah ibn Yamān رَحِمَهُ اللَّهُ to infiltrate the enemy camp, conduct a damage assessment, and ascertain the Quraysh’s disposition. Muslim رَحِمَهُ اللَّهُ relates this incident in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (1788),

⁷²⁶ For full accounts of this incident refer to *The Noble Life of the Prophet* ﷺ (3/1377&1378), Ibn Kathīr’s *The Life of the Prophet Muhammad: Al-Sīra al-Nabawiyyah* (3/153), and *The Sealed Nectar* (pgs.318&319)

wherein Ibrāhīm at-Taymī narrated from his father رَحِمَهُ اللَّهُ who said:

عَنْ إِبْرَاهِيمَ التَّيْمِيِّ، عَنْ أَبِيهِ، قَالَ: كُنَّا عِنْدَ حُذَيْفَةَ، فَقَالَ رَجُلٌ: لَوْ
أَدْرَكْتُ رَسُولَ اللَّهِ ﷺ قَاتَلْتُ مَعَهُ وَأَبْلَيْتُ، فَقَالَ حُذَيْفَةُ: أَنْتَ كُنْتَ
تَفْعَلُ ذَلِكَ؟ لَقَدْ رَأَيْنَا مَعَ رَسُولِ اللَّهِ ﷺ لَيْلَةَ الْأَحْزَابِ، وَأَخَذَتْنَا رِيحٌ
شَدِيدَةٌ وَقُرٌّ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَلَا رَجُلٌ يَأْتِينِي بِخَبَرِ الْقَوْمِ جَعَلَهُ
اللَّهُ مَعِيَ يَوْمَ الْقِيَامَةِ؟» فَسَكَتْنَا فَلَمْ يُجِبْهُ مِنَّا أَحَدٌ، ثُمَّ قَالَ: «أَلَا رَجُلٌ
يَأْتِينَا بِخَبَرِ الْقَوْمِ جَعَلَهُ اللَّهُ مَعِيَ يَوْمَ الْقِيَامَةِ؟» فَسَكَتْنَا فَلَمْ يُجِبْهُ مِنَّا
أَحَدٌ، ثُمَّ قَالَ: «أَلَا رَجُلٌ يَأْتِينَا بِخَبَرِ الْقَوْمِ جَعَلَهُ اللَّهُ مَعِيَ يَوْمَ
الْقِيَامَةِ؟»، فَسَكَتْنَا فَلَمْ يُجِبْهُ مِنَّا أَحَدٌ، فَقَالَ: «قُمْ يَا حُذَيْفَةُ، فَأَتِنَا بِخَبَرِ
الْقَوْمِ»، فَلَمْ أَجِدْ بُدًّا إِذْ دَعَانِي بِاسْمِي أَنْ أَقُومَ، قَالَ: «اذْهَبْ فَأَتِنِي
بِخَبَرِ الْقَوْمِ، وَلَا تَذَعْرُهُمْ عَلَيَّ»، فَلَمَّا وَلَّيْتُ مِنْ عِنْدِهِ جَعَلْتُ كَأَنَّمَا
أَمْشِي فِي حَمَامٍ حَتَّى أَتَيْتُهُمْ، فَرَأَيْتُ أَبَا سُفْيَانَ يَصْلِي ظَهْرَهُ بِالنَّارِ،
فَوَضَعْتُ سَهْمًا فِي كِبِدِ الْقَوْسِ فَأَرَدْتُ أَنْ أَرْمِيَهُ، فَذَكَرْتُ قَوْلَ رَسُولِ
اللَّهِ ﷺ: «وَلَا تَذَعْرُهُمْ عَلَيَّ»، وَلَوْ رَمَيْتُهُ لَأَصَبْتُهُ فَرَجَعْتُ وَأَنَا أَمْشِي
فِي مِثْلِ الْحَمَامِ، فَلَمَّا أَتَيْتُهُ فَأَخْبَرْتُهُ بِخَبَرِ الْقَوْمِ، وَفَرَعْتُ قُرْرَتِي،
فَالْبَسَنِي رَسُولُ اللَّهِ ﷺ مِنْ فَضْلِ عِبَادَةٍ كَانَتْ عَلَيْهِ يُصَلِّي فِيهَا، فَلَمْ
أَزَلْ نَائِمًا حَتَّى أَصْبَحْتُ، فَلَمَّا أَصْبَحْتُ قَالَ: «قُمْ يَا نَوْمَانُ»

“We were sitting in the company of Hudhayfah. A man said, ‘If I were in the time of the Messenger of Allāh ﷺ, I would have fought by his side and would have striven hard for his causes.’ Hudhayfah said, ‘You might have done that, (but you should not make a flourish of your enthusiasm). I was with the Messenger

of Allāh ﷺ on the night of the Battle of *Aḥzāb* and we were gripped by a violent wind and severe cold. The Messenger of Allāh ﷺ said:

أَلَا رَجُلٌ يَأْتِينَا بِخَبَرِ الْقَوْمِ جَعَلَهُ اللَّهُ مَعِيَ يَوْمَ الْقِيَامَةِ؟

‘Indeed, the man who (goes reconnoitring and) brings me news of the enemy; Allāh will cause him to be with me on the Day of Judgment.’ We all kept quiet and none of us responded to him. (Again) he said, *‘Indeed, the man who (goes reconnoitring and) brings me news of the enemy; Allāh will cause him to be with me on the Day of Judgment.’* We kept quiet and none of us responded to him. He again said, *‘Indeed, the man who (goes reconnoitring and) brings me news of the enemy; Allāh will cause him to be with me on the Day of Judgment.’* Then he said:

قُمْ يَا حُذَيْفَةُ، فَاتِنَا بِخَبَرِ الْقَوْمِ

‘Get up O Hudhayfah, bring me the news of the enemy.’ When he called me by name, I had no alternative but to get up. He said:

اذهَبْ فَاتِنِي بِخَبَرِ الْقَوْمِ، وَلَا تَدْعُهُمْ عَلَيَّ

‘Go and bring me information about the enemy, and do nothing that may provoke them against me.’ When I left him, I felt warm as if I were walking in a heated bath until I reached them. I saw Abū Sufyān warming his back against a fire, so I put an arrow in the middle of my bow intending to shoot him, when I recalled the words of the Messenger of Allāh ﷺ *‘Do not provoke them against me.’* Had I shot at him, I would have hit him, but I returned and (felt warm as if) I were walking in a heated bath (*Hammām*). Presenting myself before him, I gave him information about the enemy. When I had done so, I began to feel cold, so the Messenger of Allāh ﷺ wrapped me in a blanket that he had in excess to his own requirement and with which he used to cover himself while praying. So I continued to sleep until it was morning. When it was morning he said:

قُمْ يَا نَوْمَانُ

‘Get up, O Nawmān (i.e. the one that sleeps a lot).’”

Shaykh ibn al-‘Uthaymīn رَحْمَةُ اللَّهِ عَلَيْهِ says in his explanation of *Thalāthah al-Uṣūl* (pgs.131&132) regarding residing semi-permanently in *Dār al-Kufr*, “Travelling to the lands of the disbelievers is not permissible, except if three conditions are met:

- 1) The person have (sufficient) knowledge in order to repel the doubts (the disbelievers will attempt to subject him to)
- 2) The person has (sufficient adherence to the) religion such that it will prevent him from following (impermissible) desires
- 3) That he has a (genuine) need to do so.”

He continues (p.135), mentioning the reasons a Muslim may reside in the lands of the disbelievers’, “... Similar to this is his residing in the lands of disbelief in order to spy for the Muslims, to learn their plots against the Muslims and thus warn the Muslims. It was for this that the Prophet ﷺ sent Ḥudhayfah ibn Yamān to the polytheists during the battle of the Trench so he could learn about their condition.”

As such, it stands to even greater reason that the believer may reside in the lands of the disbelievers’ in order to wage *Jihād* against them in their lands, similar to the example set by Abū Baṣīr and his companions رَضِيَ اللَّهُ عَنْهُمْ after they fled Makkah.⁷²⁷

Indeed, Allāh ﷻ has also commanded the believers in the ‘Verse of the Sword’ (9:5), with al-Qurṭubī and others saying regarding Allāh’s words, **at every *Murṣad* (مرصد)**, “The place from which you are able to observe the enemy.” Therefore, since Allāh does not exclude the enemy’s lands from this command, the believers are ordered to travel wherever they need to in pursuit of their enemy. Whether this be for the purpose of killing, capturing, besieging, ambushing, or for gathering intelligence for any of the above, as whatever is needed in order to perform a *Wājib*, is itself *Wājib*.

⁷²⁷ His story has preceded throughout Chapter 20 (pp.372-385)

Speaking about the treaty of Ḥudaybiyyah, ibn Qayyim رَحِمَهُ اللهُ says in *Zād al-Ma'ād* (2/126), “The *Amīr* of the army should dispatch spies ahead of him towards the enemy.” He also comments concerning the *Fiqhī* benefits extracted from the battle of Ḥunayn (2/250), “It is a must that the leader dispatches spies and those able to infiltrate the enemy's ranks in order to gain information about them. Additionally, if he hears about the enemy's intention to attack him, he does not wait for them to reach him; rather he should (pre-emptively) attack them, like the Messenger of Allāh ﷺ did with Hawāzin when he met them at Hunayn.”

Yet another justification for such operations is the principle of *Qisās* - dealing with the disbelievers in the same way as they deal with the Muslims, as encompassed by the noble verse:

﴿وَالْحُرْمَتُ قِصَاصٌ فَمَنْ أَعْتَدَى عَلَيْكُمْ فَأَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا أَعْتَدَى عَلَيْكُمْ﴾

and for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you.⁷²⁸

Since the enemies of Islām have sought to fill the Muslims' lands, gathering places, schools, and mosques, with their spies and operatives. They report, carry out bombings, assassinations, direct drone and missile strikes, and other military operations against the Muslims. Accordingly, it is only fair the Muslims deal with them in like fashion, which necessitates the infiltration of believing operatives throughout their lands and institutions. This should enable the believers to have real-time intelligence, and be poised to, at short notice, conduct strategic operations directed at their Centres of Gravity (COGs) and Critical

⁷²⁸ *Sūrah al-Baqarah* (2):194

Vulnerabilities when needed - and Allāh is indeed the best disposer of affairs.

تخفى الإسلام مرأً في دار الحرب
CONCEALING ONE'S ISLĀM FOR SUCH
OPERATIONS

Despite this issue appearing to be one of simple logic and 'common sense,' it nevertheless requires clarification from the Book of Allāh and *Sunnah*, as understood by the earlier scholars. This is especially true since many of the actions falling within the remit of these types of operations *apparently* contradict a number of well-known principles of the religion. Therefore, the believer is obliged, in all cases, to give precedence to the texts (i.e. the Book, *Sunnah*, and *Ijmā'*) above his or her intellect, desires, and opinions. With such investigation, the believer realises, in this case, that it is possible to reconcile between these *apparent* contradictions. Thus, the believer is equipt with the knowledge and peace of mind in order to carry out his tasks in service of the *Jihād* without doubt and fear of straying into the impermissible due to a lack of knowledge and *Shari'ah*-based guidance. For indeed, the Messenger ﷺ commanded the believers:

دَعْ مَا يَرِيكَ إِلَى مَا لَا يَرِيكَ

“Leave that which causes you to doubt for that which does not.”⁷²⁹

With that being said, it should be noted that the issue of the believer concealing their Islām whilst operating in the midst of

⁷²⁹ *Sunan an-Nasā'ī: The Book of Drinks* (5711), *Jāmi' at-Tirmidhī: Chapters on the Day of Judgement, ar-Riqāq, and al-Walā* (2518), *Sunan ad-Dārimī: The Book of Sales* (2574), and *Musnad Aḥmad: Musnad Ahl al-Bayt* (1723)

the disbelievers, falls under the general principle outlined in the words of the Prophet ﷺ:

الْحَرْبُ خُدْعَةٌ

“War is deception.”⁷³⁰

An-Nawawī رحمه الله said, “The scholars have a consensus upon the permissibility of deceiving the disbelievers during war in any way (the believer) is able to do so, unless it involves violating a treaty or covenant.”⁷³¹

There were a number of examples of believers concealing their Islām whilst carrying out *Jihādī* operations during the lifetime of the Messenger ﷺ, despite ordinarily being required to differ from the disbelievers in their outward appearance. These were evident in the the actions of Muḥammad ibn Maslamah and Abū Nā'ilah رضي الله عنهما when they, in order to assassinate the enemy of Allāh, gave Ka'b ibn al-Ashraf the impression they were from the *Munāfiqīn* to gain his trust.⁷³²

Another example was ‘Abdullāh ibn Unays’ رضي الله عنه praying with gestures, in order not to be recognised as a Muslim, whilst he approached his target - Khālīd ibn Sufyān al-Hudhhalī and the surrounding disbelievers.⁷³³

⁷³⁰ *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (3030) and *Ṣaḥīḥ Muslim: The Book of The Book of Jihād and Expeditions* (1739)

⁷³¹ *Al-Minhāj* (4/1821)

⁷³² The narration is recorded on pp.712-714. Likewise this incident can be found in the works of *Sīrah*, in particular *The Noble Life of the Prophet ﷺ* (pp.1074-1085). Also refer to *Faṭḥ al-Bārī* (7/338) for additional narrations of the incident

⁷³³ An partial version of the narration is regorded on p.523, while a full account of the incident is present on pp.716-718

Yet another example, although unrelated to *Jihād*, is found in al-Ḥajjāj ibn ‘Ilāṭ’s رَضِيَ اللَّهُ عَنْهُ words to the Quraysh, after he sought permission from the Prophet ﷺ to lie and conceal his Islām in order to retrieve his wealth from Makkah after he embraced Islām and migrated to al-Madīnah.⁷³⁴

Additionally, in *Ṣaḥīḥ al-Bukhārī: The Book of Blood Money* (6866) ibn ‘Abbās reports that the Prophet said ﷺ to al-Miqdād:

إِذَا كَانَ رَجُلٌ مُؤْمِنٌ يُخْفِي إِيمَانَهُ مَعَ قَوْمٍ كُفَّارٍ، فَأَظْهَرَ إِيمَانَهُ فَقَتَلْتُهُ؟
فَكَذَلِكَ كُنْتَ أَنْتَ تُخْفِي إِيمَانَكَ بِمَكَّةَ مِنْ قَبْلُ

“If a man were to conceal his faith amongst a disbelieving people, then he showed his faith and they killed him, then that is how you were concealing your faith in Makkah before.”

Shaykh al-Islām ibn Taymiyyah رَضِيَ اللَّهُ عَنْهُ expounds in *Iqtiḍā’ aṣ-Ṣirāṭ al-Mustaqīm* (pgs.471&472), “And from that which clarifies this, is that all of that which has been narrated for imitating them, was only before the *Hijrah*; but afterwards, it was abrogated (i.e. forbidden). This was because the Jews at that time did not differentiate themselves from the Muslims in hairstyle, clothing, nor in symbolic (appearances) and such. Then, the order from Allāh for differentiation and to be distinguished from the infidels in the distinct characteristics and the outer (appearances) came after (the *Hijrah*), as is (evident) in the Book, *Sunnah*, and *Ijmā’* – and it became completely noticeable during the *Khilāfah* of ‘Umar ibn Al-Khaṭṭāb رَضِيَ اللَّهُ عَنْهُ. The reason for it (being prescribed after the *Hijrah*), is that it is not possible to be different from them, except with the dominance and supremacy of the *Dīn*, such as *Jihād* and the implementation of the *Jizyah* and humiliation upon them. Therefore, when the Muslims were weak in the beginning, it was not legislated for them to differentiate themselves from them.

⁷³⁴ Refer to *Musnad Aḥmad* (12409)

However when the *Dīn* was completed and became dominant and supreme, it was legislated. And an example of that today would be if a Muslim were in *Dār al-Ḥarb*, or a Land of *Kufr* which is not one of warfare - he would not be obligated to outwardly distinguish himself from them (in appearance), due to what it might bring of harms. Rather, it may be *Mustaḥabb* for the man, or even *Wājib* to share with them at times in their outward appearance if there is a religious benefit in doing so. Such as inviting them to the *Dīn*, or spying on their hidden and secret affairs in order to inform the Muslims of it, or in order to repel their harm from the Muslims, and the such things which are righteous objectives. As for the land of Islām and *Hijrah*, in which Allāh made His religion dominant, and placed humiliation and *Jizyah* upon the infidels therein - then differentiating from them is legislated (obligated).”

He also says in *al-Istighāthah* (p.389), “If the Muslim should enter into the lands of the *Rāfiḍah*⁷³⁵ or the *Khawārij*, then he conceals his love for the Companions رضي الله عنهم, he would not be considered as a *Zindīq*, and if he amends his ways (afterwards) then he is not considered sinful.”

As can be gathered from ibn Taymiyyah's words, this concealment refers only to the outward and apparent actions peculiar only to the Muslims, such as publicly wearing Islamic dress, praying in public, reciting the Qur'ān, and the like. It does not however give the Muslim the 'green light' to become a *Fāsiq* - indulging in whatever sins he desires under the guise of 'Amniyāt' (i.e. concealing his true mission). Rather, such operations should only be conducted according to the rulings, guidance, and parameters set by trusted and qualified scholars.

⁷³⁵ An extreme sect of the *Shī'ah*; they believe, amongst other things, in the divinity of their twelve 'Imams,' thus confirming their disbelief in Allāh. Currently, they are to be found largely in Iran and Iraq. Unfortunately - and we seek Allāh's pardon - their influence is spreading throughout the Middle East, largely due to the military and financial support their preachers and armed militias are afforded by the Iranian regime and her allies

They also must adhere strictly to two principles; ‘fearing Allāh as much as one is able,’ and ‘every prohibition permitted in the case of necessity is (only permitted) in as much as is necessary.’⁷³⁶ Meaning, as explained by as-Sa’dī رَحْمَةُ اللَّهِ عَلَيْهِ in *al-Qawā'id al-Fiqhiyyah* (p.125), “It is not allowed to go beyond that which is absolutely necessary, (and as such) if the necessity subsides it is *Wājib* to refrain from (the *Ḥarām*).”

As such, any actions contrary to the *Sharī'ah* are only undertaken in accordance with the specific necessities of the mission, and not exceeding them in any way, shape, or form.

In *Kashshāf al-Qinā'* (3/65) it is stated, “It is upon the commander of the army to conceal whatever he is able to of his affairs; and if he intends to attack (an enemy) he should indicate otherwise, and the evidence for this is his ﷺ actions as is recorded in the two *Ṣaḥīḥ*’s from Jābir رَضِيَ اللَّهُ عَنْهُ: ‘War is deception.’” Thus, if it is permissible for the commander of the army, along with the power and force (he wields), it is more befitting to be permissible for the lone Muslim, or small group that enters *Dār al-Ḥarb* to carry out operations benefiting the *Jihād*. It is also mentioned (3/70) that ‘*deception*’ is the intention to catch the enemy unaware.

Likewise, as can be understood from the words of scholars such as ibn Taymiyyah, the lone believer, or small groups of believers in *Dār al-Ḥarb* are in a state of ‘weakness,’ akin to the Muslims of Makkah before its conquest. In such instances, it is permitted for the believer to conceal his Islām, fearing for himself and his wealth, as indicated in the Book and the *Sunnah*:

In *Sūrah Ghāfir* (40:28) Allāh ﷻ related the story of Pharaoh saying:

⁷³⁶ In Arabic, the principle is (وَكُلُّ مَخْطُورٍ مَعَ الضَّرُورَةِ، بِقَدْرِ مَا تَحْتَاجُهُ الضَّرُورَةُ). Refer to *al-Qawā'id al-Fiqhiyyah* (p.125)

﴿وَقَالَ رَجُلٌ مُّؤْمِنٌ مِّنْ آلِ فِرْعَوْنَ يَكْتُمُ إِيمَانَهُ أَتَقْتُلُونَ رَجُلًا أَن يَقُولَ رَبِّيَ اللَّهُ وَقَدْ جَاءَكُمْ بِالْبَيِّنَاتِ مِنْ رَبِّكُمْ﴾

And a believing man from the family of Pharaoh who concealed his faith said, “Do you kill a man [merely] because he says, ‘My Lord is Allāh’ while he has brought you clear proofs from your Lord?”

Ibn Kathīr رَحِمَهُ اللَّهُ mentions about this believing man who had been concealing his Islām, “This man concealed his Faith from his people, the Egyptians, and did not reveal it except on this day when Fir’awn said, *Leave me to kill Mūsā*. The man was seized with anger for the sake of Allāh, and the best of *Jihād* is to speak a just word before an unjust ruler, as is stated in the *Hadīth*.”⁷³⁷

Additionally, in *Sūrah al-Kahf* (18:19&20) Allāh ﷻ narrates the story of the youth of the cave:

﴿وَكَذَلِكَ بَعَثْنَاهُمْ لِيَتَسَاءَلُوا بَيْنَهُمْ قَالَ قَائِلٌ مِّنْهُمْ كَمْ لَبِثْتُمْ قَالُوا لَبِثْنَا يَوْمًا أَوْ بَعْضَ يَوْمٍ قَالُوا رَبُّكُمْ أَعْلَمُ بِمَا لَبِثْتُمْ فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِّنْهُ وَلْيَتَلَطَّفْ وَلَا يُشْعِرَنَّ بِكُمْ أَحَدًا ﴿١٩﴾ إِنَّهُمْ إِن يَظْهَرُوا عَلَيْكُمْ يَرْجُمُوكُمْ أَوْ يُعِيدُوكُمْ فِي مِلَّتِهِمْ وَلَنْ تُفْلِحُوا إِذًا أَبَدًا﴾

So send one of you with this silver coin of yours to the city and let him look to which is the best of food and bring you provision from it and let him be cautious. And let no one be aware of you. Indeed, if they come to know of you, they will stone you or return you to

⁷³⁷ Tafsīr ibn Kathīr (7/468)

their religion. And never would you succeed, then - ever.”

Muslim رحمه الله also narrates in his *Ṣaḥīḥ: The Book of Faith* (149), under the chapter heading, ‘*The Permissibility of Keeping Ones Faith Secret if one Fears (from the Disbelievers)*,’ that Hudhayfah رضي الله عنه said:

عَنْ حُذَيْفَةَ، قَالَ: كُنَّا مَعَ رَسُولِ اللَّهِ ﷺ، فَقَالَ: «أَحْصُوا لِي كَمْ يَلْفِظُ الْإِسْلَامَ»، قَالَ: فَقُلْنَا: يَا رَسُولَ اللَّهِ، أَتَخَافُ عَلَيْنَا وَنَحْنُ مَا بَيْنَ السِّتْمَائَةِ إِلَى السَّبْعِمِائَةِ؟ قَالَ: «إِنَّكُمْ لَا تَدْرُونَ لَعَلَّكُمْ أَنْ تُبْتَلَوْا»، قَالَ: «فَابْتُلَيْنَا حَتَّى جَعَلَ الرَّجُلُ مِنَّا لَا يُصَلِّي إِلَّا سِرًّا»

“We were with the Messenger of Allāh ﷺ when he said, ‘Count for me how many people declare Islām.’ We said, ‘O Messenger of Allāh ﷺ, do you fear for us while we are between six and seven hundred?’ He said, ‘Indeed, you do not know, perhaps you may be tested.’ Hudhayfah said, ‘we were tested to such an extent that a man from us could not even pray except in secret.’”

تنبيه

WARNING

As has been noted by many scholars, past and present, the believer travelling to the lands of the disbelievers is at serious risk regarding their selves and their *Īmān*. This is even more the case when considering the believer there for the purposes of *Jihād*, as he will, in general, be going out of his way to avoid giving away any indicators of his Islām. Practices such frequenting mosques, attending Islāmic lectures and events,

marriages, and having contact with righteous Muslims makes his situation all the more precarious, as he will likely be isolated from the Islamic community (if one exists where he is operating) and pro-social interactions. Instead, most of his interactions will be with the enemies of Allāh ﷻ with all that accompanies this from witnessing, hearing, and possibly being required to indulge in a number of prohibited practices whilst abandoning some obligatory practices in public. This will, with little doubt, negatively impact upon his character, manners, and *Īmān*.

Ibn an-Nuḥḥās رحمه الله alludes to this when speaking about the *Amīr*'s choice of envoy he sends to the disbelievers during war, saying, "The same envoy should not be sent too many times to the same enemy in order not to have a personal relationship develop which could in turn develop into friendship. That could eventually lead to a lack of effectiveness in the envoy's mission, and could (ultimately) lead to treason by the envoy." ⁷³⁸

Since those operating in the lands of disbelief are at an even greater risk of compromise, as many believers who have visited or reside in the lands of the disbelievers can readily attest to. The *Amīr* must make provisions for the regular monitoring of the effectiveness and condition of any believing spies and operators he has behind enemy lines. If it becomes evident that they have been compromised in any way, he should have a means to recall them as quickly as possible. While if believers are operating either alone or without contact and direction from an *Amīr*, such as those preparing 'lone-wolf' or small unit operations against the disbelievers, they must make their own provisions for maintaining their *Īmān*, integrity, focus, and effectiveness in such hostile environments, and Allāh ﷻ knows best.

In addition, it is not permissible for the believing woman to undertake any type of work, *Jihādī* or otherwise, requiring her to remove her Ḥijāb and/or Islāmic dress. Thus, if there are

⁷³⁸ *Mashāri' al-Ashwāq* (pgs.1071&1072)

missions requiring the believer to appear outwardly as a disbeliever, it must be undertaken by men only. Past scholars even went as far as prohibiting the believing woman from entering the lands of the disbelievers. The only exception to this, was if she was accompanied by large military unit, or army, capable of ensuring her protection from the disbelievers.⁷³⁹ A far cry from the calamity millions of Muslims are living today.

⁷³⁹ Refer to *al-Injād fī Abwāb al-Jihād* (pgs.86&87) and *al-Mughnī* (9/206&207)

CHAPTER SUMMARY

During the life of the noble Prophet ﷺ, he ran an extensive military intelligence network throughout the Arabian Peninsula, which extended to the north into the then Byzantium territory of ash-Shām. Spies and informants would constantly update him of the movements and plans of the enemies of the fledgling Islamic state in al-Madīnah.

During this period, he ordered a number of infiltration operations, wherein he would dispatch his trusted Companions into the midsts of the enemy in order to spy on them collect critical information. Notable examples of such operation were those of al-‘Abbās, Nu’aym ibn Mas’ūd, and Ḥudhayfah ibn Yamān رَضِيَ اللَّهُ عَنْهُ.

As such, the *Amīr* should spend great amounts of money on such intelligence operations, and likewise those with purpose of conducting sabotage and attacks in the territory of the enemy.

In light of the Prophet’s words ﷺ, “*War is deception*,” “The scholars have a consensus upon the permissibility of deceiving the disbelievers during war in any way (the believer) is able to do so, unless it involves violating a treaty or covenant.” Consequently, the believer is permitted, and should conceal his Islām for such operations; imitating the disbelieving host population in their outward appearance if this will allay suspicion, draw attention away from him, and facilitate him to reach his noble objective(s). Nevertheless, throughout all of the above, he should strive in all of his affairs to fear Allāh as much as he is able.

CHAPTER 30

المليقات الإستشهادية

SELF-SACRIFICIAL OPERATIONS ⁷⁴⁰

Self-Sacrificial, also referred to as Suicide, or Martyrdom Operations, refers (usually) to the act of the *Mujāhid* carrying explosives, or piloting an explosive laden vehicle, boat, or aircraft, into an enemy target. Thereupon the explosives are detonated. Alternatively, as in the 9/11 attacks, the vehicle is used as missile itself, akin the Japanese airforce's employment of *Kamikazi* pilots during the Second World War. Accordingly, the scholars of the *Salaf*, and those adopted their methodology until the fourteenth century *Hijrī* (corresponding with the twentieth century CE), did not address this topic specifically, due to it not existing in its present form during their eras.

This being the case, it does not mean that Islamic *Fiqh* began and ended with those earlier generations, leaving those following

⁷⁴⁰ Like the previous chapter *The Ruling Regarding the One Who Kills Himself to Protect Information*, this chapter is not intended to be exhaustive, as there already exists works on this subject in the English language, such as *The Islamic Ruling on the Permissibility of Self-Sacrificial Operations: Suicide or Martyrdom?*, available to download [here](#)

them restricted to blindly following earlier rulings, unable to deal with situations not present in the era of their predecessors. Rather, the scholars of the past compiled and codified from the *Sharī'ah* the foundations and principles governing *Fiqh*, for the scholars following them to apply to any challenges or situations they were confronted with.⁷⁴¹

⁷⁴¹ In addition, the innovation needs to be dispelled that to differ over a 'controversial' issue of *Fiqh* is tantamount to blasphemy, worthy of being condemned in the harshest of terms and complete disavowal being rendered on its basis. Rather, the issue at hand is in need of being placed in the correct context:

In general, these operations are carried out, not seeking this worldly life, but seeking the pleasure of Allāh; repelling His enemies from the sanctities of Islām and the Muslims. As such, the Prophet ﷺ said about the scholar who strives to reach the truth:

إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ، إِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ

"When a judge gives a decision, having tried his best to reach the truth, and is right, there are two rewards for him; and if he gives a judgement after having tried his best (to arrive at the correct decision) but errs, there is (still) a reward for him." (*Ṣaḥīḥ al-Bukhārī: The Book of Holding Fast to the Qur'ān and Sunnah* [7352], and *Ṣaḥīḥ Muslim: The Book of Judicial Decisions* [1716])

Consequently, Allāh revealed about the *Nakhlah* operation and its aftermath, led by 'Abdullāh ibn Jaḥsh رَضِيَ اللَّهُ عَنْهُ, which took place in the second year *Hijrī*, and during which, one of the polytheists was killed in a sacred month:

﴿يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ وَصَدُّ عَنْ سَبِيلِ اللَّهِ وَكَفْرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ وَإِخْرَاجُ أَهْلِهِ مِنْهُ أَكْبَرُ عِنْدَ اللَّهِ وَالْفِتْنَةُ أَكْبَرُ مِنَ الْقَتْلِ﴾

They ask you about the sacred month - about fighting therein. Say, "Fighting therein is great [sin], but averting [people] from the way of Allāh and disbelief in Him and [preventing access to] al-Masjid al-Ḥarām and the expulsion of its people therefrom are greater [evil] in the sight of Allāh. And fitnah is greater than killing." (2:217) Until His words:

﴿إِنَّ الَّذِينَ آمَنُوا وَالَّذِينَ هَاجَرُوا وَجَاهَدُوا فِي سَبِيلِ اللَّهِ أُولَٰئِكَ يَرْجُونَ رَحْمَتَ اللَّهِ وَاللَّهُ غَفُورٌ رَحِيمٌ﴾ (٢٨)

Indeed this is a must, as one should not make the mistake of thinking one can resort to hastily cutting and pasting *Fatāwā* of the past onto present situations, unless one is fully acquainted with all of the circumstances and factors surrounding both situations. Rather, in most situations the contemporary act (or situation) requires fresh analysis in light of the *Sharī'ah* evidences, its principles, and objectives in order to arrive at the correct ruling.

Thus, despite contemporary scholars not being handicapped by the absence of earlier scholars' words on the exact subject at hand, they have nevertheless benefitted from their understanding of similar issues, such as the following examples:⁷⁴²

Indeed, those who have believed and those who have emigrated and fought in the cause of Allāh - those expect the mercy of Allāh. And Allāh is Forgiving and Merciful. (2:218)

Likewise, on the occasions Khālīd رضي الله عنه committed mistakes, the Prophet ﷺ denounced his actions, but nevertheless retained him as commander of the Muslim forces, refusing to sheath “*A sword from the swords of Allāh, that Allāh ﷻ unsheathed against the disbelievers and hypocrites.*” (Aḥmad [1/8] and at-Ṭabarānī in *al-Mu'jam al-Kabīr* [4/103]. Aḥmad Shākir رحمته الله declared its *Isnād* authentic in his verification of *Musnad Aḥmad* [1/173]). In *as-Siyāsah ash-Shar'īyyah* (p.49) ibn Taymiyyah says, “Sometimes he (i.e. Khālīd) would act in a way that the Prophet ﷺ would disapprove of until he, on one occasion, raised his hands to the heavens proclaiming,

اللَّهُمَّ إِنِّي أَبْرَأُ إِلَيْكَ مِمَّا صَنَعَ خَالِدٌ مَرَّتَيْنِ

‘O Allāh, I am indeed free from what Khālīd has done!’ (Refer to *Ṣaḥīḥ al-Bukhārī: Military Expeditions Led by the Prophet* [4339] for the full narration) when he, after despatching him to Banī Jathīmah, killed them and appropriated their wealth in an unclear fashion that was impermissible... Despite this, the Prophet ﷺ still kept him as the commander of the army...”

⁷⁴² Ibn an-Nuḥḥās, in *Mashārī' al-Ashwāq* included a chapter detailing the virtues of *Inghimāsī* operations entitled:

في فضل انغماس الرجل الشجاع أو جماعة القليلة في العدو الكبير

The Virtue of an Individual or a Small Group Immersing Themselves Within a Large Army of Disbelievers in Search of Martyrdom and Causing Damage to the Enemy. Likewise, ibn Taymiyyah wrote an essay on the subject:

قاعدة في الانغماس في العدو، وهل يباح؟

Shaykh al-Islām ibn Taymiyyah says in *Majmū' al-Fatāwā* (28/540), "The four *Imāms* have permitted the Muslim plunging into the ranks of the disbelievers, even if he strongly believes they will kill him, as long as there is a benefit for Islām in doing so." He also said, "And the man who continues to the fight the enemy alone, or with a (small) group, after his companions have fled, even if they believe they will be killed, is permissible according to the majority of the scholars of Islām from the four schools and other than them, if in doing so the enemy will be harmed. There is no difference in opinion regarding this, except an isolated one differing with what is correct." He likewise says, "The *Imāms* that are followed, such as ash-Shāfi'ī, Aḥmad, and other than them, have writings concerning the permissibility of this. Such is likewise the stance of Abī Ḥanīfah and Mālik, and others."⁷⁴³

Due to the above, it is possible to analyse a number of issues, sharing many parallels with the issue of martyrdom operations, about which there are clear texts from the *Sharī'ah*. From them are:

جواز انفاس الواحد من المسلمين في العدد الكثير

من العدو وإن يثق الرحلة

**THE PERMISSIBILITY OF INDIVIDUAL MUSLIMS
PLUNGING INTO THE ENEMY'S RANKS, DESPITE
BEING CERTAIN OF DEATH DUE TO THE ENEMY'S
OVERWHELMING NUMBERS**

Both al-Bukhārī and Muslim رحمهما الله narrate in their *Ṣaḥīḥ*'s from Jābir ibn 'Abdullāh رضي الله عنه:

The Principle on Immersing Oneself into the Ranks of the Enemy, and is it Permissible?

⁷⁴³ *Al-Inghimās fī l-'Adū* (pgs.14&17)

قَالَ رَجُلٌ لِلنَّبِيِّ ﷺ يَوْمَ أُحُدٍ أَرَأَيْتَ إِنْ قُتِلْتُ فَأَيْنَ أَنَا؟ قَالَ: «فِي الْجَنَّةِ» فَأَلْقَى تَمْرَاتٍ فِي يَدِهِ، ثُمَّ قَاتَلَ حَتَّى قُتِلَ

“On the day of Uhud, a man said to the Prophet ﷺ, ‘If I am killed where would I be?’ He replied, ‘In Paradise.’ So the man threw from his hand some dates and fought until he was killed.”⁷⁴⁴

Al-Hāfidh al-‘Irāqī رَحِمَهُ اللَّهُ stated, “In it (i.e. the narration) is the permissibility of immersing oneself into the (ranks of the) disbelievers, and embarking upon a quest for martyrdom. This is permissible, with there being no disapproval of it according to the majority of scholars.”⁷⁴⁵

Al-Bukhārī رَحِمَهُ اللَّهُ narrates in his *Ṣaḥīḥ: The Book of Jihād* (2805&2806) from Anas ibn Mālik رَضِيَ اللَّهُ عَنْهُ:

غَابَ عَمِّي أَنَسُ بْنُ النَّضْرِ عَنْ قِتَالِ بَدْرٍ، فَقَالَ: «يَا رَسُولَ اللَّهِ غِبْتُ عَنْ أَوَّلِ قِتَالٍ قَاتَلْتَ الْمُشْرِكِينَ، لَعْنِ اللَّهُ أَشْهَدَنِي قِتَالَ الْمُشْرِكِينَ لَيَرَيْنَ اللَّهُ مَا أَصْنَعُ»، فَلَمَّا كَانَ يَوْمُ أُحُدٍ، وَانْكَشَفَ الْمُسْلِمُونَ، قَالَ: «اللَّهُمَّ إِنِّي أَعْتَذِرُ إِلَيْكَ مِمَّا صَنَعَ هَؤُلَاءِ - يَعْنِي أَصْحَابَهُ - وَأَبْرَأُ إِلَيْكَ مِمَّا صَنَعَ هَؤُلَاءِ، - يَعْنِي الْمُشْرِكِينَ - ثُمَّ تَقَدَّمَ»، فَاسْتَقْبَلَهُ سَعْدُ بْنُ مُعَاذٍ، فَقَالَ: «يَا سَعْدُ بْنُ مُعَاذٍ، الْجَنَّةَ وَرَبَّ النَّضْرِ إِنِّي أَجِدُ رِيحَهَا مِنْ دُونِ أُحُدٍ»، قَالَ سَعْدٌ: فَمَا اسْتَطَعْتُ يَا رَسُولَ اللَّهِ مَا صَنَعَ، قَالَ أَنَسٌ: فَوَجَدْنَا بِهِ بَضْعًا وَثَمَانِينَ ضَرْبَةً بِالسَّيْفِ أَوْ طَعْنَةً بِرُمَحٍ، أَوْ رَمِيَةً بِسَهْمٍ وَوَجَدْنَاهُ قَدْ قُتِلَ وَقَدْ مَثَلَ بِهِ الْمُشْرِكُونَ، فَمَا عَرَفَهُ أَحَدٌ إِلَّا أُخْتَهُ بِنَاتِهِ قَالَ أَنَسٌ:

⁷⁴⁴ *Ṣaḥīḥ al-Bukhārī: The Book of Battles Led by the Prophet* (4046), *Ṣaḥīḥ Muslim: The Book of Governance* (1899), and *Sunan an-Nasā’ī: The Book of Jihād* (3154)

⁷⁴⁵ *Tarḥ at-Tathrīb* (7/207)

"كُنَّا نُرَى أَوْ نَظُنُّ أَنَّ هَذِهِ الْآيَةَ نَزَلَتْ فِيهِ وَفِي أَشْبَاهِهِ: ﴿مِنَ الْمُؤْمِنِينَ رِجَالٌ صَدَقُوا مَا عَاهَدُوا اللَّهَ عَلَيْهِ﴾ [الأحزاب: 23] إِلَى آخِرِ الْآيَةِ"

“My uncle Anas ibn an-Naḍr was absent from the battle of Badr. He said, ‘O Allāh’s Messenger, I was absent from the first battle you fought against the pagans. (By Allāh) if Allāh gives me a chance to fight the pagans, no doubt, Allāh will see how I will fight.’ On the day of Uḥud when the Muslims turned their backs and fled he said, ‘O Allāh, I apologise to you for what these (i.e. his companions) have done, and I denounce what these (i.e. the disbelievers) have done.’ Then he advanced and Sa’d ibn Mu’ādh met him. He said, ‘O Sa’d ibn Mu’ādh! By the Lord of an-Naḍr, I am smelling the fragrance of Paradise emanating from beyond (the Mountain of) Uḥud!’ Later on Sa’d said, ‘O Allāh’s Messenger! I cannot achieve, or do what he (i.e. Anas ibn an-Naḍr) did. We found him dead with more than eighty wounds from swords and arrows on his body, and his body was some badly mutilated that no one except his sister could identify him - and that was by his fingertips.’ We used to think that the following verse was revealed concerning him and other men of his sort: ***Among the believers are men true to what they promised Allāh***, (33:23) until the end of the verse.”⁷⁴⁶

In *Zād al-Ma’ād* (2/67) ibn Qayyim رَحِمَهُ اللَّهُ says in his chapter detailing the rulings and benefits derived from the battle of

⁷⁴⁶ Also in *Ṣaḥīḥ Muslim: The Book of Governance* (1903). A similar narration is also found in *Jāmi’ at-Tirmidhī: The Chapters of Tafsīr* (3506). The full verse is in *Sūrah al-Aḥzāb* (33):23, wherein Allāh ﷻ says:

﴿مِنَ الْمُؤْمِنِينَ رِجَالٌ صَدَقُوا مَا عَاهَدُوا اللَّهَ عَلَيْهِ فَمِنْهُمْ مَّنْ قَضَىٰ مَحَبَّهُ وَمِنْهُمْ مَّنْ يَنْتَظِرُ وَمَا بَدَّلُوا تَبْدِيلًا﴾

Among the believers are men true to what they promised Allāh. Among them is he who has fulfilled his vow [to the death], and among them is he who awaits [his chance]. And they did not alter [the terms of their commitment] by any alteration

Uḥud, “It is permissible to plunge into the midst of the enemy (ranks) as Anas ibn an-Naḍr and others did.”⁷⁴⁷

At-Tirmidhī رَحِمَهُ اللهُ narrates in his *Jāmi: The Chapters of Tafsīr* (2972) that Aslam Abī ‘Imrān رَحِمَهُ اللهُ said:

كُنَّا بِمَدِينَةِ الرُّومِ، فَأَخْرَجُوا إِلَيْنَا صَفًّا عَظِيمًا مِنَ الرُّومِ، فَخَرَجَ إِلَيْهِمْ مِنَ الْمُسْلِمِينَ مِثْلُهُمْ أَوْ أَكْثَرُ، وَعَلَى أَهْلِ مِصْرَ عُقْبَةُ بْنُ عَامِرٍ، وَعَلَى الْجَمَاعَةِ فَضَالَةُ بْنُ عُبَيْدٍ، فَحَمَلَ رَجُلٌ مِنَ الْمُسْلِمِينَ عَلَى صَفِّ الرُّومِ حَتَّى دَخَلَ فِيهِمْ، فَصَاحَ النَّاسُ وَقَالُوا: سُبْحَانَ اللَّهِ يُلْقِي بِيَدَيْهِ إِلَى التَّهْلُكَةِ. فَقَامَ أَبُو أَيُّوبَ الْأَنْصَارِيُّ فَقَالَ: يَا أَيُّهَا النَّاسُ إِنَّكُمْ لَتَتَوَلَّوْنَ هَذِهِ الْآيَةَ هَذَا التَّأْوِيلَ، وَإِنَّمَا أُنْزِلَتْ هَذِهِ الْآيَةُ فِينَا مَعَشَرَ الْأَنْصَارِ لَمَّا أَعَزَّ اللَّهُ الْإِسْلَامَ وَكَثُرَ نَاصِرُوهُ، فَقَالَ بَعْضُنَا لِبَعْضٍ سِرًّا دُونَ رَسُولِ اللَّهِ ﷺ: إِنَّ أَمْوَالَنَا قَدْ ضَاعَتْ، وَإِنَّ اللَّهَ قَدْ أَعَزَّ الْإِسْلَامَ وَكَثُرَ نَاصِرُوهُ، فَلَوْ أَقَمْنَا فِي أَمْوَالِنَا، فَأَصْلَحْنَا مَا ضَاعَ مِنْهَا. فَأَنْزَلَ اللَّهُ تَعَالَى عَلَى نَبِيِّهِ ﷺ يَرُدُّ عَلَيْنَا مَا قُلْنَا: ﴿وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِكُمْ إِلَى التَّهْلُكَةِ﴾ [البقرة: 195]، فَكَانَتْ التَّهْلُكَةُ الْإِقَامَةَ عَلَى الْأَمْوَالِ وَإِصْلَاحَهَا، وَتَرْكُنَا الْعَزَّو «فَمَا زَالَ أَبُو أَيُّوبَ، شَاخِصًا فِي سَبِيلِ اللَّهِ حَتَّى دُفِنَ بِأَرْضِ الرُّومِ»

“We were in one of the cities of Rome, and a huge contingent of the Romans came out towards us. An equal, or bigger contingent from the Muslims went out to meet them, and at the head of the people of *Miṣr* was ‘Utbah ibn ‘Āmir, while Faḍālah ibn ‘Ubayd was the head of another group. A man from amongst the Muslims rushed (alone) into the ranks of the Romans until he disappeared between them. (Some of) the people exclaimed, ‘Exalted is Allāh! He is throwing himself into destruction!’

⁷⁴⁷ Also in *Provisions for the Hereafter* (p.356)

Thereupon Abū Ayyūb (al-Anṣārī) stood up and said, ‘O you people, you are thinking that this is the explanation of this verse (2:195), (although) it was not revealed except concerning us, the *Anṣār*. When Allāh gave honour (and victory) to Islām and its supporters increased, some of us secretly said to one another without the Messenger of Allāh (knowing), “Indeed our wealth has suffered, and since Allāh has given honour to Islām and increased its supporters, maybe we can now tend to our wealth that has suffered.” Then Allāh responded to what we had been saying and revealed to His Prophet ﷺ: ***And spend in the way of Allāh***. So throwing ourselves into destruction meant returning to our wealth and leaving *Jihād*.’

Abū Ayyūb remained in *Jihād* until he was (eventually) buried in the land of the Romans (Constantinople).”⁷⁴⁸

Another interpretation of the meaning of the verse (2:195) was reported by Abū Ishāq رحمه الله, who narrated that he said to al-Barā’ رحمه الله, “Do you think that the words of Allāh: ***and do not throw [yourselves] with your [own] hands into destruction***, is referring to a man that single-handedly attacks (an enemy) contingent of one-thousand? He replied, ‘No. Rather, the one who throws himself into destruction is the man who commits a sin and then says: there is no repentance for me.’”⁷⁴⁹

Al-Imām ibn al-‘Arabī رحمه الله says in his *Aḥkām al-Qur’ān* (1/166), “From our scholars - al-Qāsim ibn Mukhaymirah, al-Qāsim ibn Muḥammad, and ‘Abd al-Mālīk - they say, ‘There is no problem in a man single-handedly attacking an enormous army, if he

⁷⁴⁸ Similar narrations are found in *Sunan Abī Dāwūd: The Book of Jihād* (2512), *Ṣaḥīḥ ibn Hibbān* (4711), and al-Mustadrak (3088). At-Tirmidhī declared the *Ḥadīth Ḥasan Ṣaḥīḥ Gharīb*, and al-Albānī also declared it authentic in his *Ṣaḥīḥ Abī Dāwūd* (2269)

⁷⁴⁹ *Al-Bayhaqī* (17705), and *al-Ḥāfidh* ibn Ḥajar says in *Fatḥ al-Bārī* (8/185), “It was reported by ibn Jarīr, ibn Mundhir, and others. Its *Isnād* is *Ṣaḥīḥ* from Abī Ishāq.” Constantinople, the capital of the Byzantium Empire, later became known as Islāmbul (i.e. the city of Islām) after the city’s conquest by *Sulṭān* Muḥammad II (*al-Fātiḥ*). It is presently known today as Istanbul, Turkey

possesses strength and his intention is sincerely for the sake of Allāh. Though if he does not possess any strength, then this would be a (condemnable) form of throwing oneself into destruction.’

It is also said, ‘If he is seeking martyrdom and his intention is sincere, then he should attack due to his intention being one (of the two), and this is evident from the words of the Exalted:

﴿وَمِنَ النَّاسِ مَن يَشْرِى نَفْسَهُ ابْتِغَاءَ مَرْضَاتِ اللَّهِ﴾

And of the people is he who sells himself, seeking means to the approval of Allāh.⁷⁵⁰

To me, the correct position is that it is permissible due to (any one of) four reasons:

- 1) The first is seeking martyrdom.
- 2) The second is inflicting harm (upon the enemy).
- 3) The third is to embolden the Muslims against the disbelievers.
- 4) While the forth is weakening the enemy’s moral - as if they witness that this is the potential of one Muslim, then what would they think about all of the Muslims combined?”

Imām ash-Shāfi’ī رَحِمَهُ اللَّهُ says in *al-Umm* (4/178), “I do not see any constraints regarding the unarmoured man who makes a surprise attack, even if he expects to be killed. This is due to such actions occurring in the presence of the Messenger of Allāh ﷺ (and him not disapproving of them). Likewise, after the Prophet ﷺ described the merits of such actions, an unarmoured man from the *Anṣār* attacked a group of the polytheists on the day of Badr, and was then killed.”

In *Majmū’ al-Fatāwā* (28/540) *ibn Taymiyyah* رَحِمَهُ اللَّهُ said, “The four *Imāms* have permitted the Muslim, even if he strongly

⁷⁵⁰ *Sūrah al-Baqarah* (2):207

suspects that they will kill him, to plunge into ranks of the disbelievers if there is a benefit in it for the Muslims.”

He also says in *al-Inghimās fi'l-'Adū* (p.24), “According to the scholars of Islām from the four schools and other than them, there is no contradiction, or difference of opinion in the permissibility of an individual or group (remaining behind). Even if they expect to be killed, fighting and inflicting harm upon the enemy after their companions have been defeated (or fled).”

الإجماع على جواز تقصم السرايا في الجهاد

THE CONSENSUS OF THE SCHOLARS REGARDING THE PERMISSIBILITY OF LAUNCHING SUICIDAL ATTACKS AGAINST THE ENEMY IN THE COURSE OF JIHĀD

Al-Hāfidh ibn Hajar رَحِمَهُ اللهُ says in *Fath al-Bārī* (12/316), “There is a consensus regarding the permissibility of suicidal attacks whilst waging *Jihād*.”

Ibn Abī Shaykh, at-Ṭabarānī, and al-Bayhaqī narrate from ‘Āṣim ibn ‘Umar ibn Qatādah رَحِمَهُ اللهُ that he said:

قَالَ مُعَاذُ بْنُ عَفْرَاءَ: يَا رَسُولَ اللَّهِ، مَا يُضْحِكُ الرَّبَّ مِنْ عَبْدِهِ؟ قَالَ:
غَمْسُهُ يَدَهُ فِي الْعَدُوِّ حَاسِرًا قَالَ: وَالْقَى دِرْعًا كَانَتْ عَلَيْهِ فَقَاتَلَ حَتَّى قُتِلَ

“(When the people met on the day of Badr), ‘Mu’ādh ibn ‘Afrā’ (ibn al-Hārith) said, ‘O Messenger of Allāh, what causes the Lord, Most Blessed and Exalted, to laugh at his servant?’ (The Messenger of Allāh ﷺ) replied, ‘That He sees him throw himself into the battle and fights with no armour.’ ‘Awf then discarded

his body armour, advanced (towards the enemy), then fought until he was killed.”⁷⁵¹

Al-Bayhaqī رحمه الله reports in *al-Kubrā* (17921) in the chapter: *The One Who Voluntarily Exposes Himself to Being Killed Hoping for One of the Two Rewards*,⁷⁵² from ibn Sīrīn رحمه الله, who narrates:

أَنَّ الْمُسْلِمِينَ انْتَهَوْا إِلَى حَائِطٍ قَدْ أُغْلِقَ بَابُهُ فِيهِ رِجَالٌ مِنَ الْمُشْرِكِينَ، فَجَلَسَ الْبَرَاءُ بْنُ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ عَلَى ثُرْسٍ فَقَالَ: "ارْفَعُونِي بِرِمَاحِكُمْ فَالْقَوْنِي إِلَيْهِمْ". فَرَفَعُوهُ بِرِمَاحِهِمْ فَالْقَوْهُ مِنْ وَرَاءِ الْحَائِطِ فَأَدْرَكُوهُ قَدْ قُتِلَ مِنْهُمْ عَشْرَةٌ

“That (on the day of Yamāmah) when the Muslims reached the wall (surrounding the ‘Garden of Death’), one of the polytheists had locked its door. Therefore, al-Barā’ ibn Mālik رحمه الله sat on top of a shield and said (to his companions), ‘Raise me upon your spears, and throw me to them (i.e. throw me over the wall to the polytheists on the other side).’ So they raised him up and

⁷⁵¹ *Al-Muṣannaf ibn Abī Shaybah* (19499), and similar is found in *at-Tārīkh at-Ṭabarī* (2/33), and al-Bayhaqī’s *al-Kubrā* (17974) in the chapter; *The Permissibility of a Single Man, or Group, Attacking the Enemy in Their Lands Due to the Permissibility of Attacking a Large Group Even if it is Expected they will be Killed by Them*

⁷⁵² This is in reference to the two rewards Allāh refers to in His noble verse in *Sūrah at-Tawbah* (9:52):

﴿قُلْ هَلْ تَرْتَضُونَ بِنَا إِلَّا إِحْدَى الْحُسَيْنَيْنِ وَنَحْنُ نَتَرْتَضُ بِكُمْ أَنْ يُصِيبَكُمُ اللَّهُ بِعَذَابٍ مِّنْ عِنْدِهِ أَوْ يَأْتِيَنَا فَتَرْتَضُوا إِنَّا مَعَكُمْ مُّتَرْتَضُونَ ﴿٥٢﴾﴾

Say, “Do you await for us except one of the two best things, while we await for you that Allāh will afflict you with punishment from Himself or at our hands? So wait; indeed we, along with you, are waiting.”

According to the scholars of *Tafsīr* such as at-Ṭabarī, al-Baghawī, ibn Kathīr, as-Sa’dī, and others, they refer to victory and martyrdom

launched him over the wall; and when they found him he had already killed ten of the disbelievers.”⁷⁵³

Owing to this and many other similar incidents, an-Nawawī رحمه الله states in his commentary on *Ṣaḥīḥ Muslim* (4/1913), “There is a consensus regarding the permissibility of exposing oneself to peril whilst waging *Jihād*, through duelling or other similar exploits.” He also says (4/1983) regarding the story of ‘Umayr ibn al-Ḥumām رحمه الله عنه,⁷⁵⁴ “In it is the permissibility of throwing oneself into the (ranks of) the disbelievers seeking martyrdom. This is permissible and, according to the majority of scholars, it is not disapproved of.”

مشروعية إتلاف النفس لمصلحة إظهار الدين

THE PERMISSIBILITY OF DESTROYING ONESELF TO BRING ABOUT A BENEFIT TO THE RELIGION

In *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1789), Anas ibn Mālik رحمه الله عنه narrates:

عَنْ أَنَسِ بْنِ مَالِكٍ، أَنَّ رَسُولَ اللَّهِ ﷺ أَفْرَدَ يَوْمَ أُحُدٍ فِي سَبْعَةٍ مِنَ الْأَنْصَارِ وَرَجُلَيْنِ مِنْ قُرَيْشٍ، فَلَمَّا رَهَقُوهُ، قَالَ: «مَنْ يَرُدُّهُمْ عَنَّا وَلَهُ الْجَنَّةُ؟» - أَوْ «هُوَ رَفِيقِي فِي الْجَنَّةِ» -، فَتَقَدَّمَ رَجُلٌ مِنَ الْأَنْصَارِ، فَقَاتَلَ حَتَّى قُتِلَ، ثُمَّ رَهَقُوهُ أَيْضًا، فَقَالَ: «مَنْ يَرُدُّهُمْ عَنَّا وَلَهُ الْجَنَّةُ؟» - أَوْ «هُوَ رَفِيقِي فِي الْجَنَّةِ» -، فَتَقَدَّمَ رَجُلٌ مِنَ الْأَنْصَارِ، فَقَاتَلَ حَتَّى قُتِلَ،

⁷⁵³ This happened in the year 11 *Hijrī*, and is a well-known incident found in many of the historical works, accounts of the early Islamic battles, and biographies of the Rightly Guided Caliphs (and in particular, that of Abū Bakr's رحمه الله عنه), such as as-Sallaabee's *The Biography of Abu Bakr as-Siddeeq* (pp.488-508)

⁷⁵⁴ Refer to *Ṣaḥīḥ Muslim: The Book of Governance* (1901)

فَلَمْ يَزَلْ كَذَلِكَ حَتَّى قُتِلَ السَّبْعَةُ، فَقَالَ رَسُولُ اللَّهِ ﷺ لِصَاحِبَيْهِ: «مَا أَنْصَفْنَا أَصْحَابَنَا»

“On the day of Uḥud the Messenger of Allāh ﷺ was left alone with (just) seven of the *Anṣār* and two men from the Quraysh (i.e. the *Muhājirīn*). When the polytheists attacked him he said, ‘Who will repulse them from us, and for him will be Paradise,’ or, ‘He will be my companion in Paradise.’ An *Anṣārī* advanced and fought until he was killed. They attacked again and he again said, ‘Who will repulse them from us, and for him will be Paradise,’ or, ‘He will be my companion in Paradise.’ Another *Anṣārī* advanced and fought until he was killed. This continued until all seven were killed. Thereupon the Messenger of Allāh ﷺ said to his (remaining) two companions, ‘We have not done justice to our companions.’”⁷⁵⁵

Al-Bukhārī رحمه الله narrates in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (2845), from Mūsā ibn Anas رحمه الله who said while describing the battle of Yamāmah:

عَنْ مُوسَى بْنِ أَنَسٍ، قَالَ: - وَذَكَرَ يَوْمَ الْيَمَامَةِ - قَالَ: أَتَى أَنَسٌ ثَابِتَ بْنَ قَيْسٍ وَقَدْ حَسَرَ عَنْ فِخْذِيهِ وَهُوَ يَتَحَنَّطُ، فَقَالَ: يَا عَمُّ، مَا يَحْبِسُكَ أَنْ لَا تَجِيءَ؟ قَالَ: الْآنَ يَا ابْنَ أَخِي، وَجَعَلَ يَتَحَنَّطُ - يَعْنِي مِنَ الْحَنُوطِ - ثُمَّ جَاءَ، فَجَلَسَ، فَذَكَرَ فِي الْحَدِيثِ، انْكِشَافًا مِنَ النَّاسِ،

⁷⁵⁵ According to an-Nawawī (4/1888), the Prophet’s ﷺ statement, “We have not done justice to our companions,” means, the Quraysh have not done justice to the *Anṣār*, due the Qurayshī (Muslims) not arising to fight. Rather, the *Anṣār* arose one after the other (until all seven of them lay dead). Alternatively, al-Qāḍī and others reported a slightly different pronunciation of the word (أَنْصَفْنَا) implying that those who fled from the fighting did not do justice (to the Prophet ﷺ and his nine companions رضي الله عنهم) in light of their flight - and Allāh knows best

فَقَالَ: هَكَذَا عَنْ وُجُوهِنَا حَتَّى نُضَارِبَ الْقَوْمَ، «مَا هَكَذَا كُنَّا نَفْعَلُ مَعَ رَسُولِ اللَّهِ ﷺ، بِئْسَ مَا عَوَّدْتُمْ أَقْرَانَكُمْ»

“Anas ibn Mālik went to Thābit ibn Qays who had uncovered his thighs and was applying *Hanūt*⁷⁵⁶ to his body. Anas inquired, ‘O uncle! What is delaying you (from joining the battle)?’ He replied, ‘O my nephew, I’m just coming now,’ and he continued perfuming himself with *Hanūt*. He then came and sat (in the ranks). Anas then mentioned that the people (i.e. the Muslims) had fled from the battlefield. On (hearing) that, Thābit said, ‘Clear the way for me to fight the enemy - This is not the way we used to behave in the presence of the Messenger of Allāh ﷺ. How evil are the habits you have acquired from your enemies!’ (i.e. fleeing from battle)” He then went on to fight until he was killed رَحِمَهُ اللَّهُ عَزَّ وَجَلَّ.

In *Aḥkām al-Qur’ān* (1/319) Abū Bakr al-Jaṣṣāṣ رَحِمَهُ اللَّهُ said, “As has preceded, if in destroying oneself there is a benefit for the religion then it is an honourable stance, for which Allāh praised the Companions of the Prophet ﷺ with His words:

﴿إِنَّ اللَّهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنْ لَهُمُ الْجَنَّةَ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ فَيَقْتُلُونَ وَيُقْتَلُونَ﴾

Indeed, Allāh has purchased from the believers their lives and their properties [in exchange] for that they will have Paradise. They fight in the cause of Allāh, so they kill and are killed.⁷⁵⁷

⁷⁵⁶ A fragrance comprised of musk, amber, and camphor which is applied to the burial sheets of the deceased to keep them from emitting an unpleasant odour. When fighters applied this scent to themselves before battle, as Thābit رَحِمَهُ اللَّهُ did, it signified, like the breaking of the (sword's) scabbard, they had resolved to fight until death

⁷⁵⁷ *Sūrah at-Tawbah* (9):111

﴿وَلَا تَحْسَبَنَّ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ أَمْوَاتًا بَلْ أَحْيَاءٌ عِنْدَ رَبِّهِمْ

يُرْزَقُونَ ﴿١٦٩﴾﴾

And never think of those who have been killed in the cause of Allāh as dead. Rather, they are alive with their Lord, receiving provision,⁷⁵⁸

And:

﴿وَمِنَ النَّاسِ مَنْ يَشْرِي نَفْسَهُ ابْتِغَاءَ مَرْضَاتِ اللَّهِ وَاللَّهُ

رءُوفٌ بِالْعِبَادِ ﴿٢٠٧﴾﴾

And of the people is he who sells himself, seeking means to the approval of Allāh. And Allāh is kind to [His] servants.⁷⁵⁹

... and this is evident from those verses in which Allāh praises those who sacrifice themselves for His sake.”

In *Qawā'id al-Aḥkām* (1/95) al-‘Izz ibn ‘Abd as-Salām رَحِمَهُ اللَّهُ says, “Fleeing from the battlefield is a great harm. Although it is *Wājib* if a person knows that he will be killed without inflicting any damage to the disbelievers. While imperilling oneself is only permissible if there is a benefit honouring the religion due to inflicting harm within the ranks of the polytheists. As such, if this cannot be achieved, and steadfastness will only lead to a loss of lives resulting in the delight of the disbelievers and distress amongst the Muslims, then retreat is *Wājib*. In such an instance, steadfastness becomes merely a source of harm, having no associated benefits.”

⁷⁵⁸ *Sūrah Āl ‘Imrān* (3):169

⁷⁵⁹ *Sūrah al-Baqarah* (2):207

Needless to say, a number scholars differed on account of the permissibility of the believer remaining steadfast in such a situation longing for martyrdom. However, it may be inferred that al-'Izz ibn 'Abd as-Salām رَحِمَهُ اللهُ was speaking, not from the perspective of individual gains and losses. Instead he was speaking from the perspective of considering the *Ummah* as a whole, which does not necessarily benefit every time one of her sons attains martyrdom in the cause of Allāh ﷻ. Rather, she tastes the bittersweet pill of the loss of another one of her defenders and heroes, and one of the painfully few willing to sacrifice paying the ultimate price for the sake of their Lord, religion, and fellow believers - and Allāh knows best.

Ibn Qudāmah رَحِمَهُ اللهُ says in *al-Mughnī* (9/319), “If the enemy is more than twice the number of the Muslims, although (the Muslims) suspect that they will triumph, steadfastness is more appropriate due to the great benefit associated with it. It is (also) permissible for them to retreat as they are less than twice the number of their enemy and are not guaranteed safety from destruction, and the ruling (i.e. of being allowed to retreat in such circumstances) is based upon the most likely outcome. Although, it is possible that if they think they will overcome (their larger enemy), then steadfastness becomes *Wājib* due to its benefit. But if they strongly believe that whether they retreat or fight, they will still be destroyed, then steadfastness become preferable due to the attainment of those martyred while confronting their enemy and longing for Allāh's reward. So (in this situation) they would be better than those who retreat, while it also remains a possibility that they triumph, as Allāh indeed says:

﴿كَرَّمْنَا قَلِيلَةً غَلَبَتْ فَتَةً كَثِيرَةً بِإِذْنِ اللَّهِ
وَاللَّهُ مَعَ الصَّابِرِينَ﴾

“How many a small company has overcome a large company by permission of Allāh. And Allāh is with the patient.”⁷⁶⁰

Nevertheless, if they are more than half (the numbers of their enemy) steadfastness is *Wājib*, even if they strongly believe they will be wiped out during the course of battle.”⁷⁶¹

In *Ṣaḥīḥ Muslim: The Book of Piety and Heart-Softeners* (3005) Ṣuḥayb رَضِيَ اللَّهُ عَنْهُ narrates the story of the *People of the Ditch*:

عَنْ صُهَيْبٍ، أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: "كَانَ مَلِكٌ فِيمَنْ كَانَ قَبْلَكُمْ، وَكَانَ لَهُ سَاحِرٌ، فَلَمَّا كَبِرَ، قَالَ لِلْمَلِكِ: إِنِّي قَدْ كَبِرْتُ، فَأَبْعَثْ إِلَيَّ غُلَامًا أَعْلَمُهُ السَّحَرَ، فَبَعَثَ إِلَيْهِ غُلَامًا يُعَلِّمُهُ، فَكَانَ فِي طَرِيقِهِ، إِذَا سَلَكَ رَاهِبٌ فَقَعَدَ إِلَيْهِ وَسَمِعَ كَلَامَهُ، فَأَعْجَبَهُ فَكَانَ إِذَا أَتَى السَّاحِرَ مَرًّا بِالرَّاهِبِ وَقَعَدَ إِلَيْهِ، فَإِذَا أَتَى السَّاحِرَ ضَرَبَهُ، فَشَكَا ذَلِكَ إِلَى الرَّاهِبِ، فَقَالَ: إِذَا خَشِيتَ السَّاحِرَ، فَقُلْ: حَبَسَنِي أَهْلِي، وَإِذَا خَشِيتَ أَهْلَكَ فَقُلْ: حَبَسَنِي السَّاحِرُ، فَبَيْنَمَا هُوَ كَذَلِكَ إِذْ أَتَى عَلَى دَابَّةٍ عَظِيمَةٍ قَدْ حَبَسَتِ النَّاسَ، فَقَالَ: الْيَوْمَ أَعْلَمُ السَّاحِرُ أَفْضَلُ أَمْ الرَّاهِبُ أَفْضَلُ؟ فَأَخَذَ حَجَرًا، فَقَالَ: اللَّهُمَّ إِنْ كَانَ أَمْرُ الرَّاهِبِ أَحَبَّ إِلَيْكَ مِنْ أَمْرِ السَّاحِرِ فَاقْتُلْ هَذِهِ الدَّابَّةَ، حَتَّى يَمْضِيَ النَّاسُ، فَرَمَاهَا فَفَقَتَلَهَا، وَمَضَى النَّاسُ، فَأَتَى الرَّاهِبَ فَأَخْبَرَهُ، فَقَالَ لَهُ الرَّاهِبُ: أَيُّ بَنِي أَنْتَ الْيَوْمَ أَفْضَلُ مِنِّي، قَدْ بَلَغَ مِنْ أَمْرِكَ مَا أَرَى، وَإِنَّكَ سَتُبْتَلَى، فَإِنْ ابْتُلِيتَ فَلَا تَدَلَّ عَلَيَّ، وَكَانَ الْغُلَامُ يُبْرِئُ الْأَكْمَهَ وَالْأَبْرَصَ، وَيُدَاوِي النَّاسَ مِنْ سَائِرِ الْأَدْوَاءِ، فَسَمِعَ جَلِيسٌ لِلْمَلِكِ كَانَ قَدْ عَمِيَ، فَأَتَاهُ بِهَدَايَا كَثِيرَةٍ، فَقَالَ: مَا هَاهُنَا لَكَ أَجْمَعُ، إِنْ أَنْتَ شَفَيْتَنِي، فَقَالَ: إِنِّي لَا أَشْفِي أَحَدًا إِنَّمَا

⁷⁶⁰ *Sūrah al-Baqarah* (2):249

⁷⁶¹ *Al-Mughnī* (7623), and also in *al-Kāfī* (4/26)

يَشْفِي اللَّهَ، فَإِنْ أَنْتَ آمَنْتَ بِاللَّهِ دَعَوْتُ اللَّهَ فَشَفَاكَ، فَأَمَنْ بِاللَّهِ فَشَفَاهُ
 اللَّهُ، فَأَتَى الْمَلِكَ فَجَلَسَ إِلَيْهِ كَمَا كَانَ يَجْلِسُ، فَقَالَ لَهُ الْمَلِكُ: مَنْ رَدَّ
 عَلَيْكَ بَصْرَكَ؟ قَالَ: رَبِّي، قَالَ: وَلَكَ رَبٌّ غَيْرِي؟ قَالَ: رَبِّي وَرَبُّكَ اللَّهُ،
 فَأَخَذَهُ فَلَمْ يَزَلْ يُعَذِّبُهُ حَتَّى دَلَّ عَلَى الْغُلَامِ، فَجِيءَ بِالْغُلَامِ، فَقَالَ لَهُ
 الْمَلِكُ: أَيُّ بُنْيٍّ قَدْ بَلَغَ مِنْ سِحْرِكَ مَا تُبْرِئُ الْأَكْمَهَ وَالْأَبْرَصَ، وَتَفْعُلُ
 وَتَفْعُلُ، فَقَالَ: إِنِّي لَا أَشْفِي أَحَدًا، إِنَّمَا يَشْفِي اللَّهَ، فَأَخَذَهُ فَلَمْ يَزَلْ
 يُعَذِّبُهُ حَتَّى دَلَّ عَلَى الرَّاهِبِ، فَجِيءَ بِالرَّاهِبِ، فَقِيلَ لَهُ: ارْجِعْ عَنْ
 دِينِكَ، فَأَبَى، فَدَعَا بِالْمِشَارِ، فَوَضَعَ الْمِشَارَ فِي مَفْرِقِ رَأْسِهِ، فَشَقَّهُ
 حَتَّى وَقَعَ شِقَّاهُ، ثُمَّ جِيءَ بِجَلِيسِ الْمَلِكِ فَقِيلَ لَهُ: ارْجِعْ عَنْ دِينِكَ،
 فَأَبَى فَوَضَعَ الْمِشَارَ فِي مَفْرِقِ رَأْسِهِ، فَشَقَّهُ بِهِ حَتَّى وَقَعَ شِقَّاهُ، ثُمَّ
 جِيءَ بِالْغُلَامِ فَقِيلَ لَهُ ارْجِعْ عَنْ دِينِكَ، فَأَبَى فَدَفَعَهُ إِلَى نَفَرٍ مِنْ
 أَصْحَابِهِ، فَقَالَ: اذْهَبُوا بِهِ إِلَى جَبَلٍ كَذَا وَكَذَا، فَاصْعَدُوا بِهِ الْجَبَلَ،
 فَإِذَا بَلَغْتُمْ ذُرْوَتَهُ، فَإِنْ رَجَعَ عَنْ دِينِهِ، وَإِلَّا فَاطْرَحُوهُ، فَذَهَبُوا بِهِ فَصَعِدُوا
 بِهِ الْجَبَلَ، فَقَالَ: اللَّهُمَّ اكْفِنِيهِمْ بِمَا شِئْتَ، فَارْجَفَ بِهِمُ الْجَبَلُ
 فَسَقَطُوا، وَجَاءَ يَمْشِي إِلَى الْمَلِكِ، فَقَالَ لَهُ الْمَلِكُ: مَا فَعَلَ أَصْحَابُكَ؟
 قَالَ: كَفَانِيهِمُ اللَّهُ، فَدَفَعَهُ إِلَى نَفَرٍ مِنْ أَصْحَابِهِ، فَقَالَ: اذْهَبُوا بِهِ
 فَاحْمِلُوهُ فِي قَرْقُورٍ، فَتَوَسَّطُوا بِهِ الْبَحْرَ، فَإِنْ رَجَعَ عَنْ دِينِهِ وَإِلَّا فَاقْدِفُوهُ،
 فَذَهَبُوا بِهِ، فَقَالَ: اللَّهُمَّ اكْفِنِيهِمْ بِمَا شِئْتَ، فَاَنْكَفَأَتْ بِهِمُ السَّفِينَةُ
 فَغَرِقُوا، وَجَاءَ يَمْشِي إِلَى الْمَلِكِ، فَقَالَ لَهُ الْمَلِكُ: مَا فَعَلَ أَصْحَابُكَ؟
 قَالَ: كَفَانِيهِمُ اللَّهُ، فَقَالَ لِلْمَلِكِ: إِنَّكَ لَسْتَ بِقَاتِلِي حَتَّى تَفْعَلَ مَا
 أَمْرُكَ بِهِ، قَالَ: وَمَا هُوَ؟ قَالَ: تَجْمَعُ النَّاسَ فِي صَعِيدٍ وَاحِدٍ، وَتَصْلُبُنِي
 عَلَى جِذْعٍ، ثُمَّ خُذْ سَهْمًا مِنْ كِنَانَتِي، ثُمَّ ضَعِ السَّهْمَ فِي كَبِدِ الْقَوْسِ،
 ثُمَّ قُلْ: بِاسْمِ اللَّهِ رَبِّ الْغُلَامِ، ثُمَّ ارْمِنِي، فَإِنَّكَ إِذَا فَعَلْتَ ذَلِكَ قَتَلْتَنِي،
 فَجَمَعَ النَّاسَ فِي صَعِيدٍ وَاحِدٍ، وَصَلَبَهُ عَلَى جِذْعٍ، ثُمَّ أَخَذَ سَهْمًا مِنْ

كِنَانَتِهِ، ثُمَّ وَضَعَ السَّهْمَ فِي كَبِدِ الْقَوْسِ، ثُمَّ قَالَ: بِاسْمِ اللَّهِ، رَبِّ
الْغُلَامِ، ثُمَّ رَمَاهُ فَوَقَعَ السَّهْمُ فِي صُدْغِهِ، فَوَضَعَ يَدَهُ فِي صُدْغِهِ فِي
مَوْضِعِ السَّهْمِ فَمَاتَ، فَقَالَ النَّاسُ: أَمِنَّا بِرَبِّ الْغُلَامِ، أَمِنَّا بِرَبِّ الْغُلَامِ،
أَمِنَّا بِرَبِّ الْغُلَامِ، فَاتَى الْمَلِكُ فَقِيلَ لَهُ: أَرَأَيْتَ مَا كُنْتَ تَحْذَرُ؟ قَدْ وَاللَّهِ
نَزَلَ بِكَ حَذْرُكَ، قَدْ آمَنَ النَّاسُ، فَأَمَرَ بِالْأَخْذِ فِي أَفْوَاهِ السَّكَاكِ،
فَخُذَّتْ وَأَضْرَمَ النَّيْرَانَ، وَقَالَ: مَنْ لَمْ يَرْجِعْ عَن دِينِهِ فَأَحْمُوهُ فِيهَا، أَوْ
قِيلَ لَهُ: اقْتَحِمْ، فَفَعَلُوا حَتَّى جَاءَتْ امْرَأَةٌ وَمَعَهَا صَبِيٌّ لَهَا فَتَقَاعَسَتْ أَنْ
تَقَعَ فِيهَا، فَقَالَ لَهَا الْغُلَامُ: يَا أُمَّهُ اصْبِرِي فَإِنَّكَ عَلَى الْحَقِّ

Suhayb reported that the Messenger of Allāh ﷺ said, “There lived a king before you and he had a (court) magician. As he (the magician) grew old, he said to the king, ‘I have grown old, send a young boy to me so that I should teach him magic.’ He (the king) sent to him a young man so that he should train him (in magic), and on his way (to the magician) he (the young man) found a monk sitting there. He (the young man) listened to his (the monk’s) talk and was impressed by it. It became his habit that on his way to the magician, he met the monk and set there and thus he came to the magician (late). He (the magician) beat him because of delay. He made a complaint of that to the monk, so the monk said to him, ‘When you feel afraid of the magician; say my family delayed me; and when you feel afraid of your family say, the magician delayed me.’

It so happened that (one day) a huge beast blocked the way of the people, and he (the young boy) said, ‘I will come to know today whether the magician is superior, or the monk.’ He picked up a stone saying, ‘O Allāh, if the affair of the monk is dearer to You than that of the magician, cause this animal to die so the people will be able to move freely.’ Thus, he threw the stone and killed it, and the people resumed their movements (on the path freely). He (the young man) then went to the monk informing him (of

what transpired), so the monk said, 'O my son, today you have surpassed me. Your affair has come to a stage wherein I believe that you will soon be put to trial, and if this should happen, do not disclose my identity.'

Thereafter the young man began treating the blind, those suffering from leprosy, and curing the people's illnesses. When a companion of the king who had become blind heard about him, he went to him with gifts saying, 'If you are able to cure me, all these things here will be yours.' The boy replied, 'I do not cure anyone, rather Allāh is the One who cures; and if you believe in Him, I shall supplicate to Him and He will cure you.' He thus affirmed his faith in Allāh, and Allāh cured him. Then he went to the king sitting by his side as he used to do before. The king asked him, 'Who restored your eyesight?' He replied, 'My Lord.' The King exclaimed, 'You have a Lord other than me?' He replied, 'My, and your Lord is Allāh,' thereafter the king imprisoned and tortured him until he revealed information about the boy.

The boy was thus summoned, and the king said to him, 'O boy, it has been conveyed to me that you have reached such a level in your magic that you cure the blind, those suffering from leprosy, and you do the things that you do...' Thereupon the boy said, 'I do not cure anyone; rather it is Allāh who cures.' So the king imprisoned and tortured him until he informed him about the monk. The monk was thus summoned, and it was said to him, 'Renounce your religion.' He, however, refused, so the king (ordered) for a saw to be brought and placed it in the middle of his head, and his head was sawed until it split in half. Next, the courtier of the king was brought and it was said to him, 'Renounce your religion,' but he refused. So the king (ordered) for a saw to be brought and placed it in the middle of his head, and his head was sawed until it split in half. Then the boy was summoned, and it was said to him, 'Renounce your religion,' but he refused. So the king handed him over to a group of his

courtiers, and said to them, ‘Take him to such-and-such mountain; make him climb up the mountain and when you reach its peak (ask him to renounce his faith) and if he refuses to do so, throw him (off the mountain).’

So they took him and climbed the mountain. He said, ‘O Allāh, save me from them (in any way) you please.’ The mountain then began to shake and they all fell off it (except the boy). He then came walking (back) to the king, and the king said to him, ‘What has happened to your companions?’ He said, ‘Allāh saved me from them.’ He again handed him to some of his courtiers and said, ‘Take him in a small boat and when you reach the middle of the ocean (ask him to renounce) his religion; if he does not then throw him (into the sea).’ So they took him and he said, ‘O Allāh, save me from them in any way that you please,’ whereupon the boat capsized drowning all of them. (The boy) then went walking (back) to the king, and the king said to him, ‘What has happened to your companions?’ He said, ‘Allāh saved me from them.’ He then said to the king, ‘You will not be able to kill me unless you do what I say!’ (The king) asked, ‘What is that?’ He replied, ‘You should gather all the people on a single plain and tie me to the trunk (of a tree). Then take an arrow from my quiver and say, “*In the name of Allāh, the Lord of the boy,*” and then shoot me. If you do that, only then would you be able to kill me.’

Therefore, (the king) gathered all the people in a single plain and tied him (the boy) to a tree trunk. He then took an arrow from his quiver, placed it in the bow and said, ‘*In the name of Allāh, the Lord of the boy,*’ and fired the arrow. The arrow hit his temple. (The boy) placed his hand upon his temple, and then died. So the people said, ‘*We believe in the Lord the boy, We believe in the Lord the boy, We believe in the Lord the boy!*’ The courtiers then came to the king and said, ‘Do you not see that Allāh has actually done what you feared and aimed at averting? They (the people) have believed in the Lord (of the boy).’

So (the king) ordered that ditches be dug at the junctions of all the roads. When they were dug, fires were lit in them, and (the king) said (to the people), 'Whoever does not renounce his religion, throw him in the fire, or order them to jump into it.' (The people courted death and did not renounce their religion), until a woman came carrying a baby, and she hesitated to jump into the fire, so the child said to her, 'O mother, have patience, for you are indeed upon the Truth!'"⁷⁶²

In *Majmū' al-Fatāwā* (28/540) *Shaykh al-Islām* ibn Taymiyyah رحمته الله comments, "Muslim narrated in his *Ṣaḥīḥ* from the Prophet ﷺ, the story of the 'Companions of the Ditch.' In it, the boy orders the killing of himself to bring about the manifestation of the religion, (and as a result) the four *Imām*'s have permitted the diving of the Muslims into the ranks of the disbelievers, even if in doing so the Muslims expects to be killed, if it entails a benefit for the Muslims.

We have also extracted from the discussion surrounding this topic another situation: That of a man performing an act that he believes will lead to his being killed, in order to attain a benefit for the *Jihād*, a religious benefit only achievable through such an action, to prevent the killing of others, and/or to repel the harm of an enemy that corrupts both the religious and wordly affairs. Regardless of the fact that the act of him killing himself is severer than him being killed by another, the above takes precedence (i.e. him killing himself to secure the aforementioned benefits)."

He also says (25/279) in response to a question regarding a man's words, 'I intend to kill myself for the sake of Allāh':

⁷⁶² Also reported *Jāmi' at-Tirmidhī: The Book of Tafsīr* (3540), and *Musnad Aḥmad: Musnad al-Anṣār* (23931). Also, refer to at-Tibyān Publications' *The People of the Ditch*. Ibn Kathīr records a longer version of the *Ḥadīth* from Aḥmad in his *Tafsīr* (10/427-431) of *Sūrah al-Burūj*

“In summary; if he acted in accordance with that which Allāh ordered him, and this ultimately resulted in him killing himself, then this is something good. Like the good in the one believing that he may be killed, but nevertheless going on to singlehandedly attack (the ranks of the enemy) resulting in a benefit for the Muslims. It was for the likes of this person that Allāh revealed His words:

﴿وَمِنَ النَّاسِ مَنْ يَشْرِي نَفْسَهُ أُبْتِغَاءَ مَرْضَاتِ اللَّهِ وَاللَّهُ رَءُوفٌ بِالْعِبَادِ﴾^(2:207)

And of the people is he who sells himself, seeking means to the approval of Allāh. And Allāh is kind to [His] servants.⁷⁶³

Moreover in this fashion, multitudes of Companions would hurl themselves into the (ranks of) the enemy in the presence of the Prophet ﷺ. Al-Khilāl reported with his *Isnād*, from ‘Umar ibn al-Khaṭṭāb, that a man singlehandedly rushed into the ranks of the enemy whereupon the people said, ‘he has thrown himself into destruction.’ ‘Umar replied, ‘Nay, rather he is one of those about whom Allāh said: ***And of the people is he who sells himself, seeking means to the approval of Allāh. And Allāh is kind to [His] servants.*** (2:207)’ As a result, it is essential that the believer distinguish between that which Allāh has prohibited concerning man’s intentions behind killing himself or contributing towards his own death, and that which Allāh has permitted regarding the believers selling of his life and wealth for His sake, like His words:

⁷⁶³ *Sūrah al-Baqarah (2):207*

﴿إِنَّ اللَّهَ اشْتَرَىٰ مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنَّ لَهُمُ الْجَنَّةَ
يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ فَيَقْتُلُونَ وَيُقْتَلُونَ﴾

*Indeed, Allāh has purchased from the believers their lives and their properties [in exchange] for that they will have Paradise. They fight in the cause of Allāh, so they kill and are killed.*⁷⁶⁴

Also His words:

﴿وَمِنَ النَّاسِ مَنْ يَشْرِي نَفْسَهُ ابْتِغَاءَ مَرْضَاتِ اللَّهِ وَاللَّهُ
رءُوفٌ بِالْعِبَادِ﴾

*And of the people is he who sells himself, seeking means to the approval of Allāh. And Allāh is kind to [His] servants.*⁷⁶⁵

Meaning that he sells himself.⁷⁶⁶ All of this being in accordance with what is found in the Book (i.e. the Qur'ān) and the *Sunnah*, and not with what man finds pleasing from the 'new' affairs (i.e. innovations in the religion), or from his opinions which contradict the Book and the *Sunnah*. Otherwise, he is due to become one of those 'Umar ibn 'Abd al-'Azīz was referring to when he said, 'Whoever worships Allāh without knowledge ruins more than he sets right.'

⁷⁶⁴ *Sūrah at-Tawbah* (9):111

⁷⁶⁵ *Sūrah al-Baqarah* (2):207

⁷⁶⁶ The literal Arabic wording of the verse is: *And of the people is he who purchases (yashrī) himself...*, thus, the Shaykh is mentioning the intent of Allāh's words for the Arabic speaking audience

(It is understood) from this, that it is necessary for one to recognise that Allāh is not pleased, nor does He love a person simply because he punishes himself or traverses the most difficult path, until the best of deeds (in his estimation) equates with that which is most strenuous. As such, many of the ignorant assume that the reward for everything corresponds to its degree of difficulty and hardship. Rather, a deed's reward corresponds with its benefit, advantage, and usefulness.”

[End of ibn Taymiyyah quote]

مَسْرُوعِيَّةُ إِتْلَافِ النَّفْسِ رَغْبَةً فِي الشَّهَادَةِ
THE PERMISSIBILITY OF PERILING ONESELF
LONGING FOR MARTYRDOM

Al-Imām al-Bukhārī رَحِمَهُ اللَّهُ entitled a chapter in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (2797), *The Chapter of Longing for Martyrdom*. He then proceeded to narrate from Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ:

سَمِعْتُ النَّبِيَّ ﷺ يَقُولُ: «وَالَّذِي نَفْسِي بِيَدِهِ لَوْلَا أَنَّ رَجُلًا مِنَ الْمُؤْمِنِينَ لَا تَطِيبُ أَنْفُسُهُمْ أَنْ يَتَخَلَّفُوا عَنِّي، وَلَا أَجِدُ مَا أَحْمِلُهُمْ عَلَيْهِ مَا تَخَلَّفْتُ عَنْ سَرِيَّةٍ تَغْزُو فِي سَبِيلِ اللَّهِ، وَالَّذِي نَفْسِي بِيَدِهِ لَوَدِدْتُ أَنِّي أُقْتَلُ فِي سَبِيلِ اللَّهِ، ثُمَّ أَحْيَا، ثُمَّ أُقْتَلُ، ثُمَّ أَحْيَا، ثُمَّ أُقْتَلُ، ثُمَّ أُقْتَلُ»

“I heard the Prophet ﷺ saying, ‘By Him in Who’s Hand my soul is, were it not for some men amongst the believers who hate to be left behind me, and whom I cannot provide mounts for, I would certainly never remain behind any detachment venturing out in

Allāh's path. By him in Who's Hand my soul is, I would love to be killed in the path of Allāh, then be resurrected, then be killed, then be resurrected, then be killed, then be resurrected, and then be killed.”⁷⁶⁷

Al-Ḥāfidh ibn Ḥajar رَحِمَهُ اللهُ stated in *Fath al-Bārī* (6/17), “An-Nawawī said, ‘In it (i.e. the *Ḥadīth*) is the (fact) that seeking to be killed in the path of Allāh is something beloved.’” An-Nasā’ī رَحِمَهُ اللهُ also entitled a chapter in his *Sunan* similarly: *Wishing to be Killed in the Cause of Allāh, the Exalted*.⁷⁶⁸

While *al-Imām* Abū Dāwūd رَحِمَهُ اللهُ entitled a chapter in his *Sunan*: *The Book of Jihād - A Person Who Sells Himself (for the Sake of Allāh)*, in which he narrates from ‘Abdullāh ibn Mas’ūd رَضِيَ اللهُ عَنْهُ (2536) that the Messenger of Allāh ﷺ said:

عَجِبَ رَبُّنَا عَزَّ وَجَلَّ مِنْ رَجُلٍ غَزَا فِي سَبِيلِ اللَّهِ فَانْهَزَمَ - يَعْنِي أَصْحَابُهُ - فَعَلِمَ مَا عَلَيْهِ، فَرَجَعَ حَتَّى أُهْرِيقَ دَمُهُ، فَيَقُولُ اللَّهُ تَعَالَى لِمَلَائِكَتِهِ: انْظُرُوا إِلَى عَبْدِي رَجَعَ رَغْبَةً فِيمَا عِنْدِي، وَشَفَقَةً مِمَّا عِنْدِي حَتَّى أُهْرِيقَ دَمُهُ

“Our Lord Most High is amazed with a man who fights in the path of Allāh the Exalted, and then his companions fled, but he knew that it was sinful and thus returned (fighting) until his blood was shed. Thereupon Allāh the Exalted says to His angels, **‘Look at My servant; he returned (to the battlefield) longing for**

⁷⁶⁷ Similar narrations are found in *Ṣaḥīḥ Muslim: The Book of Governance* (1876), *al-Muwaṭṭa’*: *The Book of Jihād* (1000), *Sunan an-Nasā’ī: The Book of Jihād* (3098), *Sunan ibn Mājah: The Book of Jihād* (2858), and *Jāmi’ at-Tirmidhī: The Book on the Virtues of Jihād* (1661)

⁷⁶⁸ *Sunan an-Nasā’ī: The Book of Jihād*; Chapter 30

what I have in store for him (i.e. the reward) and fearing (My punishment) until his blood was shed. ’ ’’ 769

Al-Imām ibn al-‘Arabī رحمه الله says in his *Aḥkām al-Qur’ān* (1/166), “Our scholars - al-Qāsim ibn Mukhaymirah, al-Qāsim ibn Muḥammad, and ‘Abd al-Mālik say, ‘There is no problem, if he possesses strength and his intention is sincerely for the sake of Allāh, in a man single-handedly attacking an enormous army. Although this would be a (condemnable) form of destroying oneself, if he does not possess any strength.’ It is also said, ‘If he is seeking martyrdom and his intention is sincere, then he should attack due to his intention being one from amongst them, and this is evident from the words of the Exalted:

﴿وَمِنَ النَّاسِ مَن يَشْرِي نَفْسَهُ ابْتِغَاءَ مَرْضَاتِ اللَّهِ وَاللَّهُ
رَءُوفٌ بِالْعِبَادِ﴾ (٢٠٧)

And of the people is he who sells himself, seeking means to the approval of Allāh. ’ 770

To me, the correct position is that it is permissible, due to (any one) of four perspectives:

- 1) The first is seeking martyrdom.
- 2) The second is inflicting harm (upon the enemy).
- 3) The third is to embolden the Muslims against the disbelievers.
- 4) While the forth is weakening the enemy’s moral - as if they witness that this is the potential of one Muslim, then what would they think about all of the Muslims combined?”

Al-Qurṭubī رحمه الله comments in his *Tafsīr* (4/582), on the verse:

⁷⁶⁹ Also in *Musnad Aḥmad* (3949) and *Ṣaḥīḥ ibn Ḥibbān: The Book of Prayer* (2557). Al-Albānī declared it to be *Ḥasan* (acceptable) in his *Ṣaḥīḥ Abī Dāwūd* (2287)

⁷⁷⁰ *Sūrah al-Baqarah* (2):207

﴿ إِنَّ اللَّهَ اشْتَرَىٰ مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنَّ لَهُمُ
الْجَنَّةَ يَفْتَخِرُونَ فِي سَبِيلِ اللَّهِ فَيَقْتُلُونَ وَيُقْتَلُونَ ﴾

*Indeed, Allāh has purchased from the believers their lives and their properties [in exchange] for that they will have Paradise. They fight in the cause of Allāh, so they kill and are killed.*⁷⁷¹

“The basis of the transaction is that mankind relinquishes whatever they lose, whether those things are beneficial to them or to others. As Allāh the Exalted has purchased the lives and wealth from the worshipers that they be destroyed in His obedience, and that they perish seeking His pleasure. In return for them doing so He, the Exalted, has promised them Paradise...”

فتاوى من بعض العلماء المعاصرين في جواز

عمليات الاستشهادية

VERDICTS FROM CONTEMPORARY SCHOLARS REGARDING MARTYRDOM OPERATIONS

From that which has preceded; the Qur’ānic verses, actions and statements of the Prophet ﷺ and his Companions رَضِيَ اللَّهُ عَنْهُمْ, and the statements revealing the understanding of many of the classical scholars from the *Salaf*. In addition to the application of the principles of *Fiqh* they codified for those following them. It should be clear to the reader that martyrdom, or self-sacrificial

⁷⁷¹ *Sūrah at-Tawbah* (9):111

operations, are nothing more than a continuation of the spirit of self-sacrifice and *Jihād* that was present from the moment Allāh ﷻ permitted this nation to engage in armed combat for His sake. Indeed, the motives, past and present, remain the same, and all that has changed are the means and tactics available for today's believers to combat the means and tactics employed by today's enemies of Allāh ﷻ.

It should also be pointed out, that as far as this author is aware, since the first recorded instances of martyrdom operations being employed tactically by the *Mujāhidīn*, there has been little difference of opinion over the issue. Students of knowledge and scholars from amongst the *Mujāhidīn* have all agreed on the permissibility of the Muslims use of this tactic against their disbelieving enemies - and Allāh knows best. The only objections we have witnessed amongst the honest - as we regard them - people of knowledge, emanate from those unfortunately somewhat detached from the 'Ibādah of *Jihād* (i.e. fighting) in the cause of Allāh and its contemporary realities. As such, they are not from amongst those whose opinions are given weight concerning the affairs of *Jihād*, due to their distance from its rulings, objectives, and realities - and may Allāh ﷻ forgive us and guide us to the Truth.

Ibn Taymiyyah رحمه الله ruled in *in Fatāwā al-Kubrā* (5/539), "It is *Wājib* regarding matters concerning *Jihād*, to take (rulings) from those possessing both sound religion and an understanding of the reality on the ground. Not from those who possess only a theoretical and superficial understanding of the religion, or from those who do not know or understand the reality on the ground."

In addition, he mentions in *Tafsīr Shaykh al-Islām ibn Taymiyyah* (5/115), "Ibn al-Mubārak, Aḥmad, and others would say, 'If you observe the people differing over anything; look towards the position of *Ahl ath-Thughr* (i.e. the *Murābiṭīn*), as indeed the truth is with them due to Allāh, the Exalted's words:

﴿وَالَّذِينَ جَاهَدُوا فِينَا لَنَهْدِيَنَّهُمْ سُبُلَنَا﴾

And those who strive for Us - We will surely guide them to Our ways.⁷⁷²

Al-Qurtubī similarly mentions in his *Tafsīr* (7/323) that Sufyān al-‘Uyaynah said to ibn al-Mubārak رَحِمَهُمُ اللَّهُ, “If you witness the people differing (over an issue), then you should sent it (i.e. the issue) to the *Mujāhidīn* and the *Ahl ath-Thughr*, for indeed Allāh the Exalted has said, ***We will surely guide them.***”

Following are a number of the verdicts from contemporary scholars sanctioning the use of Martyrdom operations in *Jihād*:
773

Shaykh al-Albānī رَحِمَهُمُ اللَّهُ was asked, “Enemy forces called ‘Commandos’ who are exerting pressure upon the Muslims, (and in response Muslims) have formed a ‘suicide squad’ who wear explosives and then attack the tanks of the enemy, and are thus killed in the process... Is this considered suicide?” He answered, “This is not suicide. Suicide is that a person kills himself to escape a hard life that he is enduring. As for what you are asking about - it is not suicide; rather it is *Jihād* in the path of Allāh.

⁷⁷² *Sūrah al-‘Ankabūt* (29):69

⁷⁷³ We have intentionally tried to focus here, on scholars (for the most part) not known for being in, or closely attached to the fields of *Jihād*, in an attempt to demonstrate that the phenomenon of Martyrdom Operations, or its legitimacy, is not restricted to the ‘extremist’ scholars. For, as previously mentioned, the believer will struggle to find a scholar or student of knowledge fostering a genuine concern and love for *Jihād*, considering such operations impermissible, and Allāh knows best. This does not imply however, that if such scholars do exist, they are considered as innovators, or those who do not love *Jihād* or the *Ummah*, simply due to a difference of opinion on this issue. Indeed, scholars of the past differed on bigger issues - those related to *Īmān* and *Kufr*, yet they maintained respect for one another and appreciated their opponents’ sacrifices made in search of knowledge, the Truth, and Allāh’s Pleasure

However, there is a point that should be considered; this type of action should not be carried out individually (i.e. based on one's own desires), rather it should only be carried out according to the command of the leader of the army. Thus, if the commander is not dependant on the life of this self-sacrificer and he believes that even after losing this *Mujāhid* there remains a greater benefit, such as the killing of a great number of the disbelievers; then the decision is his. Additionally, it is *Wājib* to obey him... even if the particular person does not want to carry out such an operation, as it is *Wājib* to obey the (commander).

So what a difference there is between the one who kills himself in this method whilst waging *Jihād*, and the one who (seeks) to escape form a hard life by committing suicide.

Although, if it is done haphazardly and according to an individual's personal decision (i.e. whims and desires), it falls under the warning of self-destruction. On the other hand, it if is performed in accordance with the command of the leader of the army - the one who knows the realities of the battlefield, its necessities, benefits, and so on - then it is permissible, nay even virtuous.”⁷⁷⁴

Shaykh Muḥammad al-Ḥasan Walad ad-Dadū ash-Shinqīṭī states, “Regarding these operations - if the *Jihād* against the enemies is dependent on this, such as is the case in Palestine. The Palestinian Muslims do not have an army capable of confronting the Jewish forces, while *Jihād* remains *Wājib* upon them, and as such, they do not possess any other means of achieving their purposes of attacking the Jews except this [...]. Therefore, even if during its course they kill themselves, the people are able to harm (the occupying Zionists); I view this as a form of martyrdom in the path of Allāh. The evidence for this is found in the verse(s) in *Sūrah an-Nisā*’:

⁷⁷⁴ *Nūr al-Hudā*: tape #134 (beginning @ 23:24), available [here](#). Alternatively, it can be accessed on [YouTube](#)

﴿وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ۖ
وَمَنْ يَفْعَلْ ذَلِكَ عُدْوَانًا وَظُلْمًا فَسَوْفَ نُصْلِيهِ نَارًا وَكَانَ
ذَلِكَ عَلَى اللَّهِ يَسِيرًا﴾⁷⁷⁵

*And do not kill yourselves [or one another]. Indeed, Allāh is to you ever Merciful. And whoever does that in aggression and injustice - then We will drive him into a Fire. And that, for Allāh, is [always] easy.*⁷⁷⁵

It is clear in its explanation and reasons - it says, *And whoever does that in aggression and injustice - then We will drive him into a Fire. And that, for Allāh, is [always] easy.* Therefore, according to the implied understanding (المفهوم المخالفة) and understanding the reason (for Allāh's punishment), if one does so opposing these causes and according to his faith in Allāh and hoping for His reward, the verses analogy would be completely opposite.”⁷⁷⁶

Meaning, the reason for Allāh ﷻ threatening those who commit murder, or suicide, with being driven into the Fire, is due to the deed being committed *in aggression and injustice*. Thus, the implied understanding of the verse is that if someone kills themselves for other than the reasons of *aggression and injustice*. But rather out of belief in Allāh and striving for His pleasure (according to legislated means), then such an individual would not fall under the threat contained in the verse. Likewise, the principle of *Fiqh*, ‘the ruling revolves around the (presence of absence of the) reason for issuing it,’⁷⁷⁷ dictates that the presence of absence of the reason (i.e. aggression and injustice) for the ruling (i.e. being driven into the Fire) in the verse, determines

⁷⁷⁵ Sūrah an-Nisā' (4):29&30

⁷⁷⁶ Video accessed on 20/11/2018 [here](http://t.4shbab.tv), originally published on 18th July 2013 on <http://t.4shbab.tv>

⁷⁷⁷ In Arabic: الحكم يدور مع علته وجودا وعدما

whether the ruling will come into effect, or not. Consequentially, if a person commits suicide due to aggression and injustice, the ruling of being driven into the Fire stands. However, if the aggression and injustice are absent, so is Allāh's threat of the Fire, and He ﷻ indeed knows best.

Shaykh aṭ-Ṭarīfī - may Allāh hasten his escape and keep him steadfast - maintains, "With regards to martyrdom operations in which a person throws himself into the enemies forces (wearing explosives) then detonates himself. The decision concerning this rests with the people of knowledge from (i.e. in) the region, as they are the ones capable of ruling pertaining to current affairs in light of their reality and (assessing) the harm (likely to be inflicted upon both the Muslims and their enemy)..."⁷⁷⁸

Shaykh Sulaymān al-ʿUlwān - may Allāh hasten his escape and keep him steadfast - ruled, "I see that in our time in which the Muslims are unable to fight the Jews, destroy them, and expel them from the holy land. The best treatment and medicine for us to treat the brothers of pigs and monkeys with, is that we perform these martyrdom operations, and present our souls as a sacrifice for the praiseworthy deeds. Such as motivating the *Īmān* (of others) sowing terror in the hearts of those who disbelieve, and destroying their lives and wealth. The evidence permitting martyrdom operations are numerous, and I have mentioned elsewhere around ten evidences, their benefits and fruits."⁷⁷⁹

He also states in his treatise, *Forty Ḥadīth Jihādiyyah* (pgs.37&38), after mentioning part of the *Ḥadīth* regarding the boy and the king:⁷⁸⁰

⁷⁷⁸ Accessed on 20/11/2018 [here](#), originally published on 16th December 2016

⁷⁷⁹ Refer to *The Islamic Ruling on the Permissibility of Self-Sacrificial Operations*, (pp.52-55)

⁷⁸⁰ Refer to *Ṣaḥīḥ Muslim: The Book of Zuhd and Raqā'iq* (3005). The full narration has preceded on pp.674-679

“In this *Ḥadīth* is evidence for the permissibility of Martyrdom operations (*al- ‘Amaliyāt al-Istishhādiyyah*) with the intention of elevating the religion and inflicting destruction upon the enemy. Certainly, the Prophet ﷺ told this story, not criticising the actions of the boy, even though he was the cause of his own death, but rather for the purpose of extracting lessons, morals, understanding (*Fiqh*), and rulings. The boy acted in this way hoping to achieve a legislated benefit (*Maṣāliḥ Shar’iyyah*), not due to anger or displeasure at Allāh’s Decree, or because of depression.

There is no difference between the ruling of the one who kills himself, and the one killed by someone else but he himself is the cause: In this case, such a person takes the same ruling as the killer. This is the opinion of the majority of scholars; from the likes of Mālik, ash-Shāfi’ī, and Aḥmad رَحِمَهُمُ اللَّهُ, and it has even been transmitted that this was the consensus (*Ijmā’*) of the Companions رَضِيَ اللَّهُ عَنْهُمْ.

The majority of the scholars state, with a group of them citing a consensus (*Ijmā’*) on the issue, that if the disbelievers take Muslims as human shields and there is no way to get to the disbelievers except by killing the Muslims, then they may be killed as (unintended) collateral damage. And in such cases, the Muslims who are killed die as *Shuhadā’*, and their killers are rewarded (for their efforts to reach the disbelievers).

Accordingly, if it is permissible to kill others to secure a benefit for the *Jihād* and in attacking the disbelievers, then the permissibility of killing oneself to achieve the same benefit is closer to the evidence and (more worthy of) being legislated.”

The Council of Scholars of Palestine concluded their verdict on the issue stating, “Indeed these martyrdom operation carried out

by the sons of Palestine who are guarding (the Muslims) against the accursed Jewish enemy - these are indeed permissible and (considered to be from) *Jihād* in the path of Allāh...” The above *Fatwā* was approved by eighty-five scholars from the region.⁷⁸¹

Of course, there are contemporary scholars who deem these types of operations impermissible; and fail to recognise any distinction between the prohibited suicide, and the praiseworthy killing oneself for the sake of Allāh. Neither do they view that embarking upon a course that ultimately leads to ones death at the hands of others, has any similarities with embarking upon a path that leads to one taking his own life.

In addition, it is strongly suspected - and Allāh knows best - that some of those who hold this stance have ulterior motives behind their rulings. Such as some of those who issued, or at least did not oppose, rulings stating that the *Jihād* in Afghanistan after the atheist Soviets invaded in the late seventies was *Wājib* - rather *Farḍ al-‘Ayn* (i.e. an obligation upon every able-bodied Muslim in the *Ummah*). However, when it came to the 2001 US-led invasion, they issued verdicts stating those who resisted and fought the occupying disbelievers were deviants, extremists, and *Khawārij*. Verdicts then followed to the effect that it was now permissible, or even *Wājib* for Muslims to aid the disbelievers in their global war against these ‘terrorists,’ - and Allāh’s refuge is sought from the evil of their shameless misguidance!

⁷⁸¹ Refer to *The Clarification Regarding Intentionally Targeting Women and Children*, (pp.89-93)

CHAPTER SUMMARY

The term Self-Sacrificial Operation refers (usually) to the act of the *Mujāhid* carrying explosives, or piloting an explosive laden vehicle, boat, or aircraft, into an enemy target at which point the explosives are detonated. Alternatively, as in the 9/11 attacks upon the World Trade Centre and the Pentagon, the vehicle is used as missile itself.

Scholars of the past had "... a consensus regarding the permissibility of suicidal attacks whilst waging *Jihād*." Thus, they permitted similar, albeit more technologically primitive, *Inghimāsī* operations, if anyone of the following reasons (intentions) were present in the attacker:

- 1) Seeking Martyrdom
- 2) Inflicting harm upon the enemy
- 3) Emboldening the Muslims against the disbelievers, and
- 4) Weakening the enemy's morale
- 5) Achieving some other type of benefit for Islām

They considered the *Mujāhiīn* performing such acts as being amongst those who sell this life for the next, and those whom Allāh praises with His noble words (2:207):

﴿وَمَنْ النَّاسِ مَنْ يَشْرِي نَفْسَهُ ابْتِغَاءَ مَرْضَاتِ اللَّهِ وَاللَّهُ
رَءُوفٌ بِالْعِبَادِ﴾

***And of the people is he who sells himself, seeking
means to the approval of Allāh.***

Likewise, a number of contemporary scholars have permitted the contemporary form of Self-Sacrificial, or Martyrdom

Chapter 31: Kidnapping

Operations, likening them to the *Inghimāsī* attacks of the Companions era. They differentiated such praiseworthy acts from the suicide Islām forbids and censures, as they do not contain the ***aggression and injustice*** mentioned by Allāh ﷻ as a cause for His prohibition of killing oneself. Rather they are employed as a tactic of *Jihād*, seeking none but Allāh’s Pleasure, and to defend Islām and her adherants.

CHAPTER 31

الخطف

KIDNAPPING

According to the Oxford Dictionary, the word kidnap is defined as, “To take somebody away illegally and keep them as prisoner, especially in order to get money or something else for returning them.” While in Arabic it is defined as, “To steal something and take it swiftly,” in *Nihāyah* (2/49).

The word occurs in a number of instances throughout the Book and the *Sunnah*. For example, in the narration recorded in *Ṣaḥīḥ Muslim: The Book of the Prayer* (429), Abū Harayrah رَضِيَ اللَّهُ عَنْهُ narrates that the Prophet ﷺ said:

لَيَنْتَهِيَنَّ أَقْوَامٌ عَنْ رَفْعِهِمْ أَبْصَارَهُمْ عِنْدَ الدُّعَاءِ فِي الصَّلَاةِ إِلَى السَّمَاءِ،
أَوْ لَتُخَطَفَنَّ أَبْصَارُهُمْ

“People have been prohibited from raising their eyes to the sky during the prayer, otherwise their eyesight will be *snatched away*.”

In *Sūrah al-Baqarah* (2:20) Allāh ﷻ mentions, speaking about the *Munāfiqīn*:

﴿يَكَادُ الْبَرْقُ يَخْطَفُ أَبْصَارَهُمْ﴾

*The lightning almost **snatches** away their sight.*

He also mentions in *Sūrah al-Anfāl* (8:26) the state of the believers prior to them embarking on the *Hijrah*:

﴿وَاذْكُرُوا إِذْ أَنْتُمْ قَلِيلٌ مُسْتَضْعَفُونَ فِي الْأَرْضِ تَخَافُونَ أَنْ
يَتَخَطَّفَكُمُ النَّاسُ﴾

*And remember when you were few and oppressed in the land, fearing that people might **abduct** you.*

Commenting on the word in the above verse, which is the topic of this chapter, al-Qurṭubī رحمه الله said it means, “To capture people swiftly,” and al-Baghawī رحمه الله said similarly, that it means to be abducted (by people).”

There may be a number of reasons behind the act of kidnapping or abducting, however the focus here is the act of kidnapping within the confines of *Jihād*.

As such, it may be resorted to for purposes such as securing the release of Muslim POWs, for the Prophet ﷺ commanded the believers to “*free the prisoner*.”⁷⁸² It may be used as method to procure finances in return for the release of the disbelieving detainees, in line with the statement of the Prophet ﷺ:

⁷⁸² Al-Bukhārī reports in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (3046) that Abū Mūsā al-Ash’arī رضي الله عنه narrated that the Messenger of Allāh ﷺ said:

فُكُّوا الْعَانِي، يَعْنِي: الْأَسِيرَ
“Free the Prisoners Of War.”

جُعِلَ رِزْقِي تَحْتَ ظِلِّ رُمْحِي

“My sustenance has been placed beneath the shade of my spear.”⁷⁸³

Additionally, it may be undertaken as a tool to exert leverage upon the disbelievers in order to secure another benefit for the *Ummah*, such as the withdrawal of disbelieving forces from the Muslims' territory. Alternatively, it may be carried out as an act of *Qisās*, in retaliation for the disbelievers' kidnapping of, or imprisonment of Muslims.

المشرعية خطف الحربيين

THE PERMISSIBILITY OF KIDNAPPING THE AHL-HARB

Allāh ﷻ says in *Sūrah at-Tawbah*, the ‘Verse of the Sword’ (9:5):

﴿فَإِذَا انسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ
وَخُذُوهُمْ وَأَحْصُرُوهُمْ وَأَقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ﴾

*And when the sacred months have passed, then kill the polytheists wherever you find them and **capture them** and besiege them and sit in wait for them at every place of ambush.*

⁷⁸³ *Jāmi' aṣ-Ṣaghīr* (2828). Adh-Dhahabī declared it *Ṣaḥīḥ* in *Siyar 'Alām an-Nubalā* (15/509), as did Aḥmad Shākir in his *Takhrīj* of *Musnad Aḥmad*, and also by al-Albānī in his *Ṣaḥīḥ al-Jāmi'* (2831)

Al-Ḥāfidh ibn Kathīr رَحِمَهُ اللهُ said in his *Tafsīr* (4/376) of the verse, “Allāh said here, **and capture them**, executing some and keeping some as prisoners, **and besiege them and sit in wait for them at every place of ambush**. Thus, do not wait until you find them. Rather, seek and besiege them in their areas and forts, gather intelligence about them in the various roads and fairways so that what is made wide looks constrained to them. This way, they will have no choice, but to die or embrace Islām...”

In his *Tafsīr* (5/820) at-Ṭabarī رَحِمَهُ اللهُ says, “**Capture them** means ‘and take them captive.’ **And besiege them** means ‘prevent them from travelling through the lands of Islām...’ **And sit in wait for them at every place of ambush**, means ‘and lay in wait for them at each and every place of ambush in order to kill, or capture them.’”

Al-Baghawī رَحِمَهُ اللهُ says in his *Tafsīr* (p.541), “**Capture them and besiege them**, means to take them as prisoners [...] **And sit in wait for them at every place of ambush**, means upon every route [...] and observe them in order to capture them employing all means possible.”

Shaykh ‘Abd ar-Raḥmān as-Sa’dī رَحِمَهُ اللهُ says in his *Tafsīr* (p.306), “**Then kill the polytheists wherever you find them**, any time and any place, **and capture them** taking them prisoner, **and besiege them**, meaning do not leave them to travel freely throughout Allāh’s lands and His earth that He made as a place of worship for His slaves, but rather constrain them. Therefore, those people (i.e. the disbelievers) are not welcome to inhabit it, neither are they entitled to so much as a hand span. This is because the earth belongs to Allāh, while they are His enemies who reject Him and His Messengers, and those who wage war intending to wipe His religion from the face of the earth, **but Allāh refuses except to perfect His light, although the disbelievers dislike it.**”⁷⁸⁴

⁷⁸⁴ *Sūrah at-Tawbah* (9):32

In *Aḥkāṁ al-Qur'ān* (2/457) ibn al-‘Arabī رَحِمَهُ اللهُ says regarding the words **and sit in wait for them at every place of ambush**, “Our scholars have said this is evidence of the permissibility of assassinating them prior to calling them (to Islām).”

Likewise, al-Qurṭubī رَحِمَهُ اللهُ states in his *Tafsīr* (4/424&425), “(الأخذ) means to capture - and the captive is then either killed, ransomed, or freed, in accordance with the view of the *Imām*. The meaning of **besiege them**, is to prevent them from travelling freely or entering into your lands, except if you have permitted them by granting them a covenant of security. The words of the Exalted, **and sit in wait for them at every place of ambush** [...] is evidence of the permissibility of assassinating them prior to calling them (to Islām).”

According to the principle *al-Mafhūm al-Muwāfaqah*, since it is allowed to assassinate the disbeliever not having a covenant or treaty, kidnapping is also allowed, as it is less than assassination.

In addition to the *Verse of the Sword*, there are also numerous instances from the *Sunnah* demonstrating the permissibility of kidnapping the *Ḥarbī*. Some of them are as follows:

In *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1807), Iyyās, the son of Salamah ibn al-Akwa' رَحِمَهُ اللهُ عَنهُ narrates from his father regarding the treaty of Ḥudaybiyyah:

فَلَمَّا اصْطَلَحْنَا نَحْنُ وَأَهْلُ مَكَّةَ، وَاخْتَلَطَ بَعْضُنَا بِبَعْضٍ، أَتَيْتُ شَجَرَةً فَكَسَحْتُ شَوْكَهَا فَاصْطَبَجْتُ فِي أَصْلِهَا، قَالَ: فَأَتَانِي أَرْبَعَةٌ مِنَ الْمُشْرِكِينَ مِنْ أَهْلِ مَكَّةَ، فَجَعَلُوا يَقْعُونَ فِي رَسُولِ اللَّهِ ﷺ، فَأَبْغَضْتُهُمْ، فَتَحَوَّلْتُ إِلَى شَجَرَةٍ أُخْرَى، وَعَلَّقُوا سِلَاحَهُمْ وَاصْطَبَجُوا، فَبَيْنَمَا هُمْ كَذَلِكَ إِذْ نَادَى مُنَادٍ مِنْ أَسْفَلِ الْوَادِي، يَا لِّلْمُهَاجِرِينَ، قُتِلَ ابْنُ زَيْمٍ، قَالَ: فَاخْتَرَطْتُ سَيْفِي، ثُمَّ شَدَدْتُ عَلَى أَوْلَيْكَ الْأَرْبَعَةِ وَهُمْ

رُفُودٌ، فَأَخَذْتُ سِلَاحَهُمْ، فَجَعَلْتُهُ ضِغْتًا فِي يَدِي، قَالَ: ثُمَّ قُلْتُ،
وَالَّذِي كَرَّمَ وَجْهَ مُحَمَّدٍ، لَا يَرْفَعُ أَحَدٌ مِنْكُمْ رَأْسَهُ إِلَّا صَرَبْتُ الَّذِي فِيهِ
عَيْنَاهُ، قَالَ: ثُمَّ جِئْتُ بِهِمْ أَشَوْفُهُمْ إِلَى رَسُولِ اللَّهِ ﷺ، قَالَ: وَجَاءَ
عَمِّي عَامِرٌ بِرَجُلٍ مِنَ الْعَبَلَاتِ، يُقَالُ لَهُ: مِكْرَزٌ يَقُودُهُ إِلَى رَسُولِ اللَّهِ
ﷺ عَلَى فَرَسٍ، مُجَفَّفٍ فِي سَبْعِينَ مِنَ الْمُشْرِكِينَ، فَنَظَرَ إِلَيْهِمْ رَسُولُ
اللَّهِ ﷺ، فَقَالَ: «دَعُوهُمْ، يَكُنْ لَهُمْ بَدْءُ الْفُجُورِ، وَثَنَاهُ»، فَعَفَا عَنْهُمْ
رَسُولُ اللَّهِ ﷺ، وَأَنْزَلَ اللَّهُ: ﴿وَهُوَ الَّذِي كَفَّ أَيْدِيَهُمْ عَنْكُمْ وَأَيْدِيَكُمْ
عَنْهُمْ بِطَنْ مَكَّةَ مِنْ بَعْدِ أَنْ أَظْفَرَكُمْ عَلَيْهِمْ﴾ [الفتح: 24] الْآيَةَ كُلَّهَا

“After we had concluded a peace treaty with the people of Makkah, and the people of one side began to mix with those of the other, I came to a tree, swept away its thorns and lay down (for rest) at its base. (While I lay there), four polytheists from the Makkans came and began to talk ill of the Messenger of Allāh ﷺ. I got enraged with them and moved to another tree. They hung their weapons (to the branches of the tree) and lay down (for rest). (While they lay there), somebody from the lower part of the valley cried out, ‘O *Muhājirīn*! Ibn Zunaym has been murdered.’ I drew my sword and attacked these four while they were asleep. I seized their arms and collecting them in my hand, said, ‘By the One Who has conferred honour upon Muḥammad, none of you shall raise his head, or else I will smite his face!’ (Then) I came driving them along to the Prophet ﷺ. (At the same time) my uncle ‘Āmir came (to him) with a man from al-‘Abalāt called Mikraz. ‘Āmir was dragging him on a horse with a thick covering on its back, along with seventy polytheists. The Messenger of Allāh ﷺ cast a glance at them and said, ‘*Let them go (so that) they may prove guilty of breach of trust more than once (before we take action against them).*’ As such, the Messenger of Allāh ﷺ forgave them. On this occasion Allāh revealed the verse: ***And it is He who withheld their hands from***

you and your hands from them within [the area of] Makkah after He caused you to overcome them.”⁷⁸⁵

In *Ṣaḥīḥ al-Bukhārī: The Book of Military Expeditions led by the Prophet* (4372) and *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1764), with Muslim's wording, Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ narrates:

بَعَثَ رَسُولُ اللَّهِ ﷺ خَيْلًا قَبْلَ نَجْدٍ، فَجَاءَتْ بِرَجُلٍ مِنْ بَنِي حَنِيفَةَ يُقَالُ لَهُ: ثُمَامَةُ بْنُ أُثَالٍ، سَيِّدُ أَهْلِ الْيَمَامَةِ، فَرَبَطُوهُ بِسَارِيَةٍ مِنْ سَوَارِي الْمَسْجِدِ، فَخَرَجَ إِلَيْهِ رَسُولُ اللَّهِ ﷺ، فَقَالَ: «مَاذَا عِنْدَكَ يَا ثُمَامَةُ؟» فَقَالَ: عِنْدِي يَا مُحَمَّدُ خَيْرٌ، إِنْ تَقَتَّلْتَ تَقَتَّلَ ذَا دَمٍ، وَإِنْ تَنْعَمْتَ تَنْعَمَ عَلَى شَاكِرٍ، وَإِنْ كُنْتَ تُرِيدُ الْمَالَ فَسَلْ تُعْطَ مِنْهُ مَا شِئْتَ، فَتَرَكَهُ رَسُولُ اللَّهِ ﷺ حَتَّى كَانَ بَعْدَ الْعَدِ، فَقَالَ: «مَا عِنْدَكَ يَا ثُمَامَةُ؟» قَالَ: مَا قُلْتُ لَكَ، إِنْ تَنْعَمْتَ تَنْعَمَ عَلَى شَاكِرٍ، وَإِنْ تَقَتَّلْتَ تَقَتَّلَ ذَا دَمٍ، وَإِنْ كُنْتَ تُرِيدُ الْمَالَ فَسَلْ تُعْطَ مِنْهُ مَا شِئْتَ، فَتَرَكَهُ رَسُولُ اللَّهِ ﷺ حَتَّى كَانَ مِنَ الْعَدِ، فَقَالَ: «مَاذَا عِنْدَكَ يَا ثُمَامَةُ؟» فَقَالَ: عِنْدِي مَا قُلْتُ لَكَ، إِنْ تَنْعَمْتَ تَنْعَمَ عَلَى شَاكِرٍ، وَإِنْ تَقَتَّلْتَ تَقَتَّلَ ذَا دَمٍ، وَإِنْ كُنْتَ تُرِيدُ الْمَالَ فَسَلْ تُعْطَ مِنْهُ مَا شِئْتَ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَطْلِقُوا ثُمَامَةَ»، فَانْطَلَقَ إِلَى نَخْلٍ قَرِيبٍ مِنَ الْمَسْجِدِ، فَأَغْتَسَلَ، ثُمَّ دَخَلَ الْمَسْجِدَ، فَقَالَ: أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ، يَا مُحَمَّدُ، وَاللَّهِ، مَا كَانَ عَلَى الْأَرْضِ وَجْهٌ أَبْغَضَ إِلَيَّ مِنْ وَجْهِكَ، فَقَدْ أَصْبَحَ وَجْهِكَ أَحَبَّ الْوُجُوهِ كُلِّهَا إِلَيَّ، وَاللَّهِ، مَا كَانَ مِنْ دِينٍ أَبْغَضَ إِلَيَّ مِنْ دِينِكَ، فَأَصْبَحَ دِينُكَ أَحَبَّ الدِّينِ كُلِّهِ إِلَيَّ، وَاللَّهِ، مَا كَانَ مِنْ بَلَدٍ أَبْغَضَ إِلَيَّ مِنْ بَلَدِكَ، فَأَصْبَحَ بَلَدُكَ أَحَبَّ الْبِلَادِ كُلِّهَا إِلَيَّ، وَإِنَّ خَيْلَكَ أَخَذْتَنِي وَأَنَا أُرِيدُ الْعُمْرَةَ فَمَاذَا تَرَى؟ فَبَشَّرَهُ رَسُولُ اللَّهِ ﷺ

⁷⁸⁵ *Sūrah al-Fath* (48):24

وَأَمْرُهُ أَنْ يَعْتَمِرَ، فَلَمَّا قَدِمَ مَكَّةَ قَالَ لَهُ قَائِلٌ: أَصَبَوْتُ، فَقَالَ: لَا، وَلَكِنِّي أَسْلَمْتُ مَعَ رَسُولِ اللَّهِ ﷺ، وَلَا وَاللَّهِ، لَا يَأْتِيكُمْ مِنَ الْإِمَامَةِ حَبَّةٌ حِنْطَةٍ حَتَّى يَأْذَنَ فِيهَا رَسُولُ اللَّهِ ﷺ

“The Messenger of Allāh ﷺ dispatched cavalry in the direction of Najd: They captured a man from the tribe of Banī Ḥanīfah called Thumāmah ibn Uthāl - he was the chief of the people of Yamāmah. People bound him to one of the pillars of the mosque. The Messenger of Allāh ﷺ came to him and said, ‘O Thumāmah, what do you think?’ He replied, ‘O Muḥammad, I have a good opinion of you. If you kill me, you will kill a person who has spilt blood. If you release me, you will have released a grateful person. If you want wealth, ask and you shall get what you demand. The Messenger of Allāh ﷺ left him (in this condition) for two days (and came to him again) and said, ‘What do you think O Thumāmah?’ He replied, ‘What I have already told you. If you do me a favour, you will be doing a favour to a grateful person. If you kill me, you will kill a person who has spilt blood. If you want wealth, ask and you shall get what you demand. The Messenger of Allāh ﷺ left him until the next day when he (came again) and said, ‘What do you think O Thumāmah?’ He replied, ‘What I have already told you. If you do me a favour, you will be doing a favour to a grateful person. If you kill me, you will kill a person who has spilt blood. If you want wealth, ask and you shall get what you demand.’ The Messenger of Allāh ﷺ said, ‘Set Thumāmah free.’ He went to a palm-grove near the mosque and performed *Ghusl* (i.e. purified himself from ritual impurity). Then he entered the mosque and said, ‘I bear witness that there is no deity worthy of worship except Allāh, and I bear witness that Muḥammad is His slave and Messenger. O Muḥammad, by Allāh there was no face on earth more hateful to me than your face, but now your face has become the dearest of faces to me. By Allāh, there was no religion more hateful to me than your religion, but now your religion has become the dearest of all religions to me. By Allāh, there was no

city more hateful to me than your city, but now your city has become the dearest of all cities to me. Your horsemen captured me when I was intending 'Umrah. Now what is your opinion (regarding it)?' The Messenger of Allāh ﷺ conveyed glad tidings to him and instructed him to perform 'Umrah. When he reached Makkah, someone asked him, 'Have you changed your religion?' He said, 'No! Rather I have embraced Islām with the Messenger of Allāh ﷺ. By Allāh, you will not get a single grain of wheat from Yamāmah until it is permitted by the Messenger of Allāh ﷺ.'⁷⁸⁶

Ibn Ḥajar رَحِمَهُ اللَّهُ commented in *Fath al-Bārī* (8/89) on the beneficial rulings contained within this *Ḥadīth* saying, "From is (the permissibility) of sending detachments to the lands of the disbelievers and capturing whoever of them they come across, then deciding whether to execute or keep them as prisoners."⁷⁸⁷

Muslim رَحِمَهُ اللَّهُ also narrates in his *Ṣaḥīḥ: The Book of Vows* (1641):

عَنْ عِمْرَانَ بْنِ حُصَيْنٍ، قَالَ: كَانَتْ ثَقِيفُ حُلَفَاءِ لَبْنَى عُقَيْلٍ، فَأَسْرَتْ ثَقِيفُ رَجُلَيْنِ مِنْ أَصْحَابِ رَسُولِ اللَّهِ ﷺ، وَأَسَرَ أَصْحَابُ رَسُولِ اللَّهِ ﷺ، رَجُلًا مِنْ بَنِي عُقَيْلٍ، وَأَصَابُوا مَعَهُ الْعَضْبَاءَ، فَأَتَى عَلَيْهِ رَسُولُ اللَّهِ ﷺ وَهُوَ فِي الْوَتَاكِ، قَالَ: يَا مُحَمَّدُ، فَأَتَاهُ، فَقَالَ: «مَا شَأْنُكَ؟» فَقَالَ: بِمِ أَخَذْتَنِي، وَبِمِ أَخَذْتَ سَابِقَةَ الْحَاجِّ؟ فَقَالَ: «إِعْظَامًا لِذَلِكَ أَخَذْتُكَ بِجَرِيرَةِ حُلَفَائِكَ ثَقِيفَ»، ثُمَّ انْصَرَفَ عَنْهُ، فَنَادَاهُ، فَقَالَ: يَا مُحَمَّدُ، يَا مُحَمَّدُ، وَكَانَ رَسُولُ اللَّهِ ﷺ رَحِيمًا رَفِيقًا، فَرَجَعَ إِلَيْهِ، فَقَالَ: «مَا شَأْنُكَ؟» قَالَ: إِنِّي مُسْلِمٌ، قَالَ: «لَوْ قُلْتَهَا وَأَنْتَ تَمْلِكُ

⁷⁸⁶ A shorter version of this narration is in *Sunan Abī Dāwūd: The Book of Jihād* (2679) and was authenticated by al-Albānī

⁷⁸⁷ Also, refer to *Nayl al-Awṭār* (7/356)

أَمْرَكَ أَفْلَحْتَ كُلَّ الْفَلَّاحِ»، ثُمَّ انْصَرَفَ، فَنَادَاهُ، فَقَالَ: يَا مُحَمَّدُ، يَا مُحَمَّدُ، فَأَتَاهُ، فَقَالَ: «مَا شَأْنُكَ؟» قَالَ: إِنِّي جَائِعٌ فَأَطْعِمْنِي، وَظَمَانٌ فَاسْقِنِي، قَالَ: «هَذِهِ حَاجَتُكَ»، فَفَدِيَ بِالرَّجُلَيْنِ

‘Imrān ibn Ḥuṣayn رَضِيَ اللَّهُ عَنْهُ reported that the tribe of Thaqīf was the ally of Banū ‘Uqayl. Thaqīf took two men from amongst the Companions of the Messenger of Allāh ﷺ as prisoners. (In return) the Companions of the Messenger of Allāh ﷺ took a man from Banū ‘Uqayl as prisoner, and captured al-‘Aḍbā’ (the she-camel of the Prophet) along with him. The Messenger of Allāh ﷺ came to him whilst he was tied up with rope. He said, ‘O Muḥammad.’ He came near him and said, ‘What is the matter with you?’ Thereupon he (the prisoner) said, ‘Why have you taken me as prisoner and why have you caught hold of one preceding the pilgrims (i.e. the she-camel, as she carried the Prophet on her back and walked ahead of the multitudes)?’ He said, ‘(Yours is a great fault). I have captured you for the crime of your allies, Banū Thaqīf.’ He then turned away. He again called him and said, ‘O Muḥammad, O Muḥammad,’ and since the Messenger of Allāh ﷺ was very compassionate and tender-hearted, he returned to him and said, ‘What is the matter with you?’ He said, ‘I am a Muslim,’ whereupon he ﷺ said, ‘Had you said this when you had been the master of yourself, you would have gained every success.’ He then turned away. He (the prisoner) called him again saying, ‘O Muḥammad, O Muḥammad.’ He came to him and said, ‘What is the matter with you?’ He said, ‘I am hungry, feed me, and I am thirsty, so provide me with drink.’ He ﷺ said, ‘That is (to satisfy) your want.’ He was then ransomed for two persons (who had been taken prisoner by Thaqīf).

In *Sunan Abī Dāwūd: The Book of Jihād* (2678) Jundub ibn Makīth رَضِيَ اللَّهُ عَنْهُ narrates:

عَنْ جُنْدُبِ بْنِ مَكِيثٍ، قَالَ: «بَعَثَ رَسُولُ اللَّهِ ﷺ عَبْدَ اللَّهِ بْنَ غَالِبِ اللَّيْثِيِّ فِي سَرِيَّةٍ وَكُنْتُ فِيهِمْ، وَأَمَرَهُمْ أَنْ يَشْنُؤُوا الْغَارَةَ عَلَى بَنِي الْمُلُوحِ بِالْكَدِيدِ». فَخَرَجْنَا حَتَّى إِذَا كُنَّا بِالْكَدِيدِ لَقِينَا الْحَارِثَ بْنَ الْبَرِّصَاءِ اللَّيْثِيَّ، فَأَخَذْنَاهُ فَقَالَ: إِنَّمَا جِئْتُ أُرِيدُ الْإِسْلَامَ، وَإِنَّمَا خَرَجْتُ إِلَى رَسُولِ اللَّهِ ﷺ فَقُلْنَا: إِنْ تَكُنْ مُسْلِمًا لَمْ يَضُرَّكَ رِبَاطُنَا يَوْمًا وَلَيْلَةً، وَإِنْ تَكُنْ غَيْرَ ذَلِكَ نَسْتَوْتُقُ مِنْكَ، فَشَدَدْنَاهُ وَثَاقًا

“The Messenger of Allāh ﷺ dispatched ‘Abdullāh ibn Ghālib al-Laythī at the head of a detachment in which I was also present. He ordered them to attack Banī al-Mulawwiḥ from all sides at al-Kadīd. So we went out and when we reached al-Kadīd we encountered al-Hārith ibn al-Barṣā’ al-Laythī, so we captured him. He said, ‘I came with the intention of embracing Islām and going to the Messenger of Allāh.’ We said, ‘If you are Muslim, then there is no harm if we keep you in chains for a day and night; and if you are not, we shall (still) tie you with chains.’ So we detained him with chains.”⁷⁸⁸

Al-Khaṭṭābī رَحِمَهُ اللَّهُ comments in ‘*Awn al-Ma’būd* (7/243), “In the *Ḥadīth* is the permissibility of binding the disbelieving captive with rope, handcuffs, shackles and their likes if it is feared he may escape and there is no guarantee of safety from his evil if he is left unfettered.”

In conclusion, the *Verse of the Sword* (9:5), the *Sunnah* of the Messenger ﷺ, and the understanding of the early scholars indicate the permissibility of capturing and kidnapping the

⁷⁸⁸ The reason al-Hārith was detained was due to the Companions were about to raid Banī al-Mulawwiḥ, and they did not want to take the risk of him raising the alarm by informing them of the impending operation if they released him.

This narration has been classified as *Da’if* (weak), nevertheless the preceeding narrations attest to the general principle of capturing the disbelievers

Harbī. In addition, it also possible to deduce that since the disbelievers' blood, wealth, and honour are permitted, and this only ceases to be the case if they embrace Islām or enter into a treaty or convent with the Muslims. Kidnapping, which is less serious than killing, is also permitted according to the principle of *Fiqh*.⁷⁸⁹ Thus, it become apparent that the act of kidnapping as an act of *Jihād* does not carry the negative connotations the term, or act, has in the English language, or if carried out by the disbelievers in order to spread corruption throughout the land.

Some of the benefits that may be secured for the believers through kidnapping the disbelievers are:

- Ransom
- Exchanging the disbelieving captive(s) for Muslim prisoners
- As a prelude to their execution
- To temporarily secure the Muslims against any potential evil that may emanate from the disbeliever(s) in question
- As an encouragement for them to accept Islām, as is evident in the words of the Prophet ﷺ:

عَجَبَ رَبُّنَا عَزَّ وَجَلَّ مِنْ قَوْمٍ يُقَادُونَ إِلَى الْجَنَّةِ فِي السَّلَاسِلِ

“Our Lord Most High is amazed with people who will be driven to paradise in chains.”⁷⁹⁰

“Meaning, they are forcibly taken (by the Muslims) against their will in chains and shackles to *Dār al-Islām*. Allāh then blesses them with belief, and thus they enter through their chains and shackles into Paradise,” as explained in ‘*Awn al-Ma’būd* (7/242).

Al-Bukhārī رَحِمَهُ اللَّهُ records a similar narration wherein Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ said, commenting on the words of Allāh in *Sūrah*

⁷⁸⁹ Namely, the principle (المفهوم الموافقة) *al-Mafhūm al-Muwāfaqah*

⁷⁹⁰ Narrated by Abū Hurayrah رَضِيَ اللَّهُ عَنْهُ in *Sunan Abī Dāwūd: The Book of Jihād* (2677) and authenticated by al-Albānī

Āl ‘Imrān (3:110), You are the best nation produced for mankind:

خَيْرَ النَّاسِ لِلنَّاسِ تَأْتُونَ بِهِمْ فِي السَّلَاسِلِ فِي أَعْنَاقِهِمْ حَتَّى يَدْخُلُوا فِي
الْإِسْلَامِ

“The best people for the people; you bring them with chains around their necks until they enter into Islām.” ⁷⁹¹

- As a means of terrorizing the disbelievers, as per the command of Allāh in *Sūrah al-Anfāl (8:60)*:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ
عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَآخَرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ﴾

And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allāh and your enemy and others besides them whom you do not know [but] whom Allāh knows.

As for the rulings and treatment afforded to the kidnaped and/or detained disbeliever, they fall within the scope of the Messenger of Allāh's ﷺ words to his Companions رَضِيَ اللَّهُ عَنْهُمْ on the day of Badr, as recorded by ibn Kathīr رَضِيَ اللَّهُ عَنْهُ in *al-Bidāyah wa'n-Nihāyah (3/83)*: ⁷⁹²

اسْتَوْصُوا بِهِمْ خَيْرًا

“Treat them kindly.”

⁷⁹¹ *Ṣaḥīḥ al-Bukhārī: The Book of Tafsīr (4557)*. Ibn Kathīr also mentions this narration in his *Tafsīr of Sūrah Āl ‘Imrān (3:110)*

⁷⁹² Refer to *The Life of Prophet Muḥammad ﷺ (2/319)*, *The Noble Life of the Prophet ﷺ (2/1019&1020)*, and *The Sealed Nectar (p.230)* for some instances of how the Companions understood and implemented this noble command

CHAPTER SUMMARY

Kidnapping may be employed for purposes such as securing the release of Muslim POWs, as a method to procure finances in return for the release of the disbelieving detainees, to exert leverage upon the disbelievers in order to secure another benefit for the *Ummah*. Additionally, it may be employed to terrorise the disbelievers, as a prelude to their execution, to secure the Muslims against any potential evil that may emanate from the disbeliever(s) in question, or as an act of *Qisās*.

Evidence for the permissibility of this act is to be found in the actions of the Prophet and the Companions, likewise Allāh's order in the 'Verse of the Sword,' wherein He ﷻ says (9:5):

وَحْذُوهُمْ

and capture them

However, as a general rule, any kidnapped disbelievers should be treated well, as per the *Sunnah* of the Messenger of Allāh ﷺ and his Companions رضي الله عنهم.

CHAPTER 32

الاغتيال

ASSASSINATION

In the English language, the verb of assassination - assassinate, means to, "To murder an important or famous person, especially for political reasons: *The prime minister was assassinated by extremists...*" ⁷⁹³

While according to the Arabic language, the language of the Book and the *Sunnah*, there are a number of similar that describe killing an opponent outside of the confines of the battlefield, such as:

- *al-Fatk* (الفتك)
- *al-Ghīlah* (الغيلة) ⁷⁹⁴

Ibn al-Athīr رَحِمَهُ اللهُ says in *Nihāyah fī Gharīb al-Ḥadīth* (3/409), "*al-Fatk* is that a man attacks and kills his companion (i.e.

⁷⁹³ Oxford Advanced Learner's Dictionary (p.77)

⁷⁹⁴ Another meaning of this word is that a man has sexual intercourse with his wife while she is breastfeeding, alternatively it is said to refer to when a woman breastfeeds whilst pregnant. As such, these (i.e. assassination and the above) meanings should not be confused, as they are both found in the *Sunnah* (i.e. *Aḥādīth*)

victim) whilst the latter is unaware. While *al-Ghīlah* refers to when the killer kills his victim via deception using an unobvious method.”

In their common usage, both the English and Arabic terms carry negative connotations. However, as will be demonstrated - with Allāh’s permission - this is not the case with the type of assassination sanctioned by the *Sharī’ah*.

مسروعية اغتيال الكافر المحارب

PERMISSIBILITY OF ASSASSINATING THE ḤARBĪ

Evidence for the legitimacy of assassination in Islām is present in the words of the Exalted in *Sūrah al-Baqarah* (2:191):

﴿وَأَقْتُلُوهُمْ حَيْثُ ثَقِفْتُمُوهُمْ﴾

And kill them wherever you overtake them.

And in *Sūrah at-Tawbah* (9:5):

﴿فَإِذَا انسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ
وَخُذُوهُمْ وَأَحْصُرُوهُمْ وَأَقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ﴾

And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush.

Ibn Kathīr رَحِمَهُ اللهُ says about the *Verse of the Sword* (9:5) in his *Tafsīr* (4/376), "... Do not wait until you find them. Rather, seek and besiege them in their areas and forts, gather intelligence about them in the various roads and fairways so that what is made wide looks ever constricted to them. This way, they will have no choice, but to be killed or embrace Islām." ⁷⁹⁵

In his *Tafsīr* (5/820) ibn Jarīr at-Ṭabarī رَحِمَهُ اللهُ comments on the words, ***and sit in wait for them at every place of ambush***, saying, "Sit in wait for them at every place of ambush seeking either to kill or capture them."

In *Aḥkām al-Qur'ān* (2/457) ibn al-‘Arabī رَحِمَهُ اللهُ says regarding the words ***and sit in wait for them at every place of ambush***, "Our scholars have said that this is evidence of the permissibility of assassinating them prior to calling them (to Islām)."

Likewise, al-Qurṭubī رَحِمَهُ اللهُ states in his *Tafsīr* (4/425), "(الأخذ)" means to capture, and the captive is then either killed, ransomed, or freed according to the assessment of the *Imām*. The meaning of ***and besiege them*** is to prevent them from travelling freely or entering into your lands, except if you have permitted them by granting them a covenant of security. The words of the Exalted, ***and sit in wait for them at every place of ambush*** [...] is evidence of the permissibility of assassinating them prior to calling them (to Islām)." ⁷⁹⁶

In addition, during the lifetime of Allāh's Messenger ﷺ there were a number of examples in which he ﷺ either ordered

⁷⁹⁵ The English translation reads "they will have no choice, but to *die* or embrace Islām," which appears to be an error, as in the original Arabic text (2/307) the word used is (القتل) which means to be killed, murdered, assassinated, and so forth

⁷⁹⁶ It must be noted that, according to the majority of scholars, this is if the message of Islām has already reached them

explicitly or implicitly the assassination of a number of individuals from amongst the disbelievers.

From amongst the first recorded instances of this was the assassination of Ka'b ibn al-Ashraf which occurred between the battles of Badr and Uḥud. This operation was carried out by a unit comprising of men from the Aws tribe headed by Muḥammad ibn Maslamah رَضِيَ اللَّهُ عَنْهُ.

The incident is recorded in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1801), with 'Amr narrating that he heard Jābir رَضِيَ اللَّهُ عَنْهُ saying:

عَنْ عَمْرٍو، سَمِعْتُ جَابِرًا، يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ لِكَعْبِ بْنِ الْأَشْرَفِ؟ فَإِنَّهُ قَدْ آذَى اللَّهَ وَرَسُولَهُ»، فَقَالَ مُحَمَّدُ بْنُ مَسْلَمَةَ: يَا رَسُولَ اللَّهِ، أَتُحِبُّ أَنْ أَقْتُلَهُ؟ قَالَ: «نَعَمْ»، قَالَ: ائْذَنْ لِي، فَلَأَقُلَّ، قَالَ: «قُلْ»، فَأَتَاهُ، فَقَالَ لَهُ: وَذَكَرَ مَا بَيْنَهُمَا، وَقَالَ: إِنَّ هَذَا الرَّجُلَ قَدْ أَرَادَ صَدَقَةً، وَقَدْ عَنَانَا، فَلَمَّا سَمِعَهُ قَالَ: وَأَيْضًا وَاللَّهِ، لَتَمْلُئَنَّهُ، قَالَ: إِنَّا قَدْ اتَّبَعْنَاهُ الْآنَ، وَنَكَرَهُ أَنْ نَدْعَهُ حَتَّى نَنْظُرَ إِلَى أَيِّ شَيْءٍ يَصِيرُ أَمْرُهُ، قَالَ: وَقَدْ أَرَدْتُ أَنْ تُسَلِّفَنِي سَلَفًا، قَالَ: فَمَا تَرْهَنُنِي؟ قَالَ: مَا تُرِيدُ؟ قَالَ: تَرْهَنُنِي نِسَاءَكُمْ، قَالَ: أَنْتَ أَجْمَلُ الْعَرَبِ، أَنْزَهَنُكَ نِسَاءَنَا؟ قَالَ لَهُ: تَرْهَنُونِي أَوْلَادَكُمْ، قَالَ: يُسِبُّ ابْنُ أَحَدِنَا، فَيُقَالُ: رُهْنٌ فِي وَسْقَيْنِ مِنْ تَمْرٍ، وَلَكِنْ نَرْهَنُكَ اللَّأَمَةَ - يَعْنِي السَّلَاحَ -، قَالَ: فَنَعَمْ، وَوَاعَدَهُ أَنْ يَأْتِيَهُ بِالْحَارِثِ، وَأَبِي عَبْسٍ بْنِ جَبْرِ، وَعَبَّادِ بْنِ بَشِيرٍ، قَالَ: فَجَاءُوا فَدَعَوْهُ لَيْلًا فَنَزَلَ إِلَيْهِمْ، قَالَ سُفْيَانُ: قَالَ غَيْرُ عَمْرٍو: قَالَتْ لَهُ امْرَأَتُهُ: إِنِّي لَأَسْمَعُ صَوْتًا كَأَنَّهُ صَوْتُ دَمٍ، قَالَ: إِنَّمَا هَذَا مُحَمَّدُ بْنُ مَسْلَمَةَ، وَرَضِيْعُهُ، وَأَبُو نَائِلَةَ، إِنَّ الْكَرِيمَ لَوْ دُعِيَ إِلَى طَعْنَةٍ لَيْلًا لَأَجَابَ، قَالَ مُحَمَّدٌ: إِنِّي إِذَا جَاءَ، فَسَوْفَ أُمْدُّ يَدِي إِلَى رَأْسِهِ، فَإِذَا اسْتَمَكَنْتُ مِنْهُ

فَدُونَكُمْ، قَالَ: فَلَمَّا نَزَلَ نَزَلَ وَهُوَ مُتَوَشِّحٌ، فَقَالُوا: نَجِدُ مِنْكَ رِيحَ الطَّيِّبِ، قَالَ: نَعَمْ تَحْتِي فُلَانَةٌ هِيَ أَعْطَرُ نِسَاءِ الْعَرَبِ، قَالَ: فَتَأْذُنُ لِي أَنْ أَشُمَّ مِنْهُ، قَالَ: نَعَمْ فَشُمَّ، فَتَنَاوَلَ فَشَمَّ، ثُمَّ قَالَ: أَتَأْذُنُ لِي أَنْ أَعُودَ، قَالَ: فَاسْتَمَكَنَ مِنْ رَأْسِهِ، ثُمَّ قَالَ: دُونَكُمْ، قَالَ: فَقَتَلُوهُ

The Messenger of Allāh ﷺ said, 'Who will deal with Ka'b ibn al-Ashraf? He has maligned Allāh and His Messenger.' Muḥammad ibn Maslamah said, 'Messenger of Allāh, do you wish that I should kill him?' He said, 'Yes.' He said, 'Permit me to talk (to him in a way I deem necessary).' He said, 'Talk (as you like).' So, Muḥammad ibn Maslamah went to Ka'b and spoke to him, referred to the old friendship between them and said, 'This man (i.e. the Prophet) has made up his mind to collect charity (from us) and this has put us to a great hardship.' When he heard this Ka'b said, 'By Allāh, you will be put to more trouble by him.' Muḥammad ibn Maslamah said, 'No doubt, now we have become his followers and we do not like to forsake him until we see what turn his affairs will take. I want that you should give me a loan.' He said, 'What will you give me as collateral?' He asked, 'What do you want?' He replied, 'Pledge me your women.' He said, 'You are the most handsome of the Arabs; should we pledge our women to you?' He said, 'Then pledge me your children.' He said, 'The son of one of us may abuse us saying that he was pledged for two *Wasqs* of dates, rather we can pledge you (our) weapons.' He said, 'Fine.' Then Muḥammad ibn Maslamah promised that he would come to him with Hārith, Abū 'Abs ibn Jabr and 'Abbād ibn Bishr. So they came and called upon him at night. He came down to them. Sufyān says that all the narrators except 'Amr have stated that his wife said (to him), 'I hear a voice which sounds like the voice of murder.' He replied, 'It is only Muḥammad ibn Maslamah and his foster-brother, Abū Nā'ilah. When a gentleman is called at night, even it to be pierced with a spear, he should respond to the call.' Muḥammad said to his companions, 'As he comes down, I will

extend my hands towards his head and when I hold him fast, you should do your job.’ So when he came down and he was holding his cloak under his arm, they said to him, ‘We perceive from you an exquisite scent.’ He said, ‘Yes, I have with me the most scented of all of the women of Arabia.’ He said, ‘Would you allow me to smell (the scent on your head).’ He replied, ‘Yes, you may smell.’ So he held his head it and smelt. Then he said, ‘Allow me to do so (once again).’ He then held his head fast and said to his companions, ‘What are you waiting for?’ So they killed him.”⁷⁹⁷

Imām an-Nawawī رحمه الله comments on the *Ḥadīth* in *al-Minhāj* (4/1896&1897), “Muslim mentions the account of Muḥammad ibn Maslamah and Ka’b ibn al-Ashraf along with the deception that he used (to kill him) [...]. Al-Qāḍī said, ‘It is not allowed for anyone to say that his killing was treachery, as indeed someone mentioned this in the presence of ‘Alī ibn Abī Ṭālib رضي الله عنه and ‘Alī ordered he be beheaded.” As this would be implying that the Prophet ﷺ was treacherous, as he ordered the operation. An-Nawawī continues, “As for al-Bukhārī’s chapter heading for this *Ḥadīth*, ‘Assassinating (*al-Fatk*) the *Ahl al-Ḥarb*,’ it does not denote treachery. Rather *al-Fatk*, and similarly *al-Ghīlah* is to kill (when the victim is) heedless and unaware (about the killers intention). Thus, a number (of scholars) have used this *Ḥadīth* as evidence indicating the permissibility of assassinating and raiding at night whoever from the disbelievers has heard the message (of Islām), without having to (firstly) call them to Islām.”

Al-Ḥāfidh ibn Ḥajar رحمه الله comments on the same incident in *Fath al-Bārī* (6/160), “It is permissible to assassinate the *Ḥarbī* using stealth, and he (i.e. al-Bukhārī) makes this clear in this chapter

⁷⁹⁷ al-Bukhārī also records a narration regarding this incident in his *Ṣaḥīḥ: The Book of Jihād and Expeditions* (3032), also *Sunan Abī Dāwūd: The Book of Jihād* (2768)

(i.e. *Assassinating (al-Fatk) the Ahl al-Ḥarb*) and also the previous chapter, '*Killing the Sleeping Polytheist*'..."⁷⁹⁸

After the Aws' successful assassination of Ka'b ibn al-Ashraf, not wanting to miss out on the rewards, men from the Khazraj tribe petitioned the Messenger of Allāh ﷺ to permit them to assassinate Abū Rāfi'.⁷⁹⁹ In *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (3023) al-Barā' ibn 'Āzib رَضِيَ اللَّهُ عَنْهُ narrates:

بَعَثَ رَسُولُ اللَّهِ ﷺ رَهْطًا مِنَ الْأَنْصَارِ إِلَى أَبِي رَافِعٍ فَدَخَلَ عَلَيْهِ عَبْدُ اللَّهِ بْنُ عَتِيكٍ يَبْتِئُهُ لَيْلًا فَقَتَلَهُ وَهُوَ نَائِمٌ

"The Messenger of Allāh ﷺ sent a group from the *Anṣār* to Abū Rāfi', then 'Abdullāh ibn 'Atīk entered his house whilst he was sleeping and killed him."⁸⁰⁰

Ibn Ḥajar رَضِيَ اللَّهُ عَنْهُ commented in *Fath al-Bārī* (6/156), "Contained within (the *Ḥadīth*) is the permissibility of spying on the polytheist, seeking their weaknesses (i.e. periods of inattentiveness), and assassinating (*Ightiyāl*) those amongst them that are mature and cause (the Muslims) harm. Abū Rāfi' harboured enmity towards the Messenger of Allāh ﷺ and used to incite the people against him. Additionally, (from the *Ḥadīth*) is the permissibility of killing the polytheist without calling them

⁷⁹⁸ In this chapter, which is in *The Book of Jihād and Expeditions*, al-Bukhārī relates two narrations (3022&3023) regarding the assassination of Abū Rāfi' the Jew

⁷⁹⁹ In *Fath al-Bārī* (7/342) ibn Ḥajar says, "The Aws did not do anything (praiseworthy) except that the Khazraj would say, 'By Allāh, they will not overtake us with this virtuous (act),' and likewise were the Aws. Therefore, when the Aws killed Ka'b ibn al-Ashraf, the Khazraj (asked each other) 'who is like Ka'b was in his enmity towards the Messenger of Allāh.' They then mentioned ibn Abī al-Ḥuqayq (i.e. Abū Rāfi')..." Ibn Kathīr narrates a similar statement via az-Zuhri in *al-Bidāyah wa'n-Nihāyah* (3/301) and in *The Life of the Prophet Muḥammad* ﷺ (3/186&187)

⁸⁰⁰ Also in *The Book of Expeditions led by the Prophet* (4040)

to Islām, if he is from those that the message has reached. Also the permissibility of attacking and killing him while he is asleep, if it is known that he is persistent upon disbelief [...] and the way to know this is either through revelation, or his actions (indicating his disbelief).”

Another notable assassination ordered by the Messenger of Allāh ﷺ was that of Khālīd ibn Sufyān's. Ibn Kathīr رحمه الله relates the incident in *al-Bidāyah wa'n-Nihāyah* (3/305) saying:

The *Hāfidh* al-Bayhaqī gave this account in *ad-Dalā'il* (pgs.279&280) following that of Abū Rāfi'.

Imām Aḥmad stated that Ya'qūb related to him that his father quoted Ibn Ishāq as saying, “Muḥammad ibn Ja'far ibn az-Zuhayr related to me, from ibn 'Abdullāh ibn Unays, from his father, who said:

دَعَانِي رَسُولُ اللَّهِ ﷺ فَقَالَ: إِنَّهُ قَدْ بَلَغَنِي أَنَّ خَالِدَ بْنَ سَفْيَانَ
بَنِ نُبَيْحِ الْهَذَلِيِّ يَجْمَعُ لِي النَّاسَ لِيُغْزَوْنِي وَهُوَ بَعْرَنَةٌ فَاقْتُلْهُ.
قَالَ قُلْتُ يَا رَسُولَ اللَّهِ انْعَتُهُ لِي حَتَّى أَعْرِفَهُ. قَالَ إِذَا رَأَيْتَهُ
وَجَدْتَ لَهُ قُشْعِرِيرَةً قَالَ فَخَرَجْتُ مُتَوَشِّحًا سَيْفِي حَتَّى وَقَعْتُ
عَلَيْهِ وَهُوَ بَعْرَنَةٌ مَعَ عَنِي يَرْتَادُ لَهُنَّ مَنْزِلًا وَحِينَ كَانَ وَقْتُ الْعَصْرِ
فَلَمَّا رَأَيْتُهُ وَجَدْتُ مَا وَصَفَ لِي رَسُولُ اللَّهِ ﷺ مِنَ الْقُشْعِرِيرَةِ
فَأَقْبَلْتُ نَحْوَهُ وَخَشِيتُ أَنْ يَكُونَ بَيْنِي وَبَيْنَهُ مُجَاوِلَةٌ تَشْعُلُنِي عَنِ
الصَّلَاةِ فَصَلَّيْتُ وَأَنَا أَمْشِي نَحْوَهُ أَوْمِي بِرَأْسِي لِلرُّكُوعِ وَالسُّجُودِ
فَلَمَّا انْتَهَيْتُ إِلَيْهِ قَالَ: مَنْ الرَّجُلُ؟ قُلْتُ رَجُلٌ مِنَ الْعَرَبِ سَمِعَ
بِكَ وَبِجَمْعِكَ لِهَذَا الرَّجُلِ فَجَاءَكَ لِذَلِكَ.

قَالَ أَجَلٌ إِنَّا فِي ذَلِكَ قَالَ فَمَشَيْتُ مَعَهُ شَيْئًا حَتَّى إِذَا أُمَكْنَنِي
 حَمَلْتُ عَلَيْهِ السَّيْفَ حَتَّى قَتَلْتُهُ ثُمَّ خَرَجْتُ وَتَرَكْتُ طَعَائِنَهُ
 مُكَبَّاتٍ عَلَيْهِ فَلَمَّا قَدِمْتُ عَلَى رَسُولِ اللَّهِ ﷺ فَرَأَنِي قَالَ أَفْلَحَ
 الْوَجْهَ قَالَ قُلْتُ قَتَلْتُهُ يَا رَسُولَ اللَّهِ قَالَ صَدَقْتَ قَالَ ثُمَّ قَامَ مَعِيَ
 رَسُولُ اللَّهِ ﷺ فَدَخَلَ فِي بَيْتِهِ فَأَعْطَانِي عَصَا فَقَالَ: أُمْسِكْ
 هَذِهِ عِنْدَكَ يَا عَبْدَ اللَّهِ بْنِ أُتَيْسٍ. قَالَ فَخَرَجْتُ بِهَا عَلَى النَّاسِ
 فَقَالُوا مَا هَذِهِ الْعَصَا؟ قَالَ قُلْتُ أُعْطَانِيهَا رَسُولُ اللَّهِ ﷺ وَأَمَرَنِي
 أَنْ أُمْسِكَهَا قَالُوا أَوْلَا تَرْجِعُ إِلَى رَسُولِ اللَّهِ ﷺ فَتَسْأَلُهُ عَنْ
 ذَلِكَ. قَالَ فَارْجَعْتُ إِلَى رَسُولِ اللَّهِ ﷺ فَقُلْتُ يَا رَسُولَ اللَّهِ لِمَ
 أُعْطَيْتَنِي هَذِهِ الْعَصَا؟ قَالَ آيَةُ بَيْنِي وَبَيْنَكَ يَوْمَ الْقِيَامَةِ إِنْ أَقْلَ
 النَّاسِ الْمُنْحَصَرُونَ يَوْمَئِذٍ. قَالَ فَقَرَنَهَا عَبْدُ اللَّهِ بِسَيْفِهِ فَلَمْ تَزَلْ
 مَعَهُ حَتَّى إِذَا مَاتَ أُمِرَ بِهَا فَضُمَّتْ فِي كَفِّهِ ثُمَّ دُفِنَا جَمِيعًا

‘The Messenger of Allāh ﷺ called for me and said, *I have been informed that Khālīd ibn Sufyān ibn Nubayḥ al-Hudhalī is gathering a force of men to attack me. He is at ‘Urāna. Go to him and kill him.* I replied, Messenger of Allāh, please describe him to me so I can recognize him. When you see him, he replied, *you will tremble.* So I left bearing my sword. I came upon him at ‘Urāna where he had with him litter-borne women, for whom he had sought a campsite. When it was time for the al-‘Aṣr prayer - and I had experienced the shivering that the Messenger of Allāh ﷺ had described - I went towards him. As I did, I was worried that some conflict might develop between us that would preoccupy me from performing the prayer. So I prayed as I walked towards him, nodding my head for the prayer bows and prostrations. When I reached him, he said, ‘And who might you be?’ I replied, I am a bedouin Arab who has heard of you and of your gathering a force

against that fellow, and I have therefore come to you. He replied, ‘Yes, I am engaged in that.’ I then accompanied him a while until, when I could, I attacked him with my sword and killed him. I then departed; leaving his women all crouched over him.

When I reached the Messenger of Allāh ﷺ and he saw me he said, *Successful is his face!* I told him, I have killed him O Messenger of Allāh. *You have spoken the truth* he said. He then arose with me, entered his house and presented me with a stick saying, *Keep this with you, ‘Abdullāh ibn Unays...*”⁸⁰¹

Imām Aḥmad related this from Yaḥyā ibn Ādam, from ‘Abdullāh ibn Idrīs, from Muḥammad ibn Ishāq, from Muḥammad ibn Ja’far ibn az-Zubayr, from one of the sons of ‘Abdullāh ibn Unays - or alternatively, from ‘Abdullāh ibn ‘Abdullāh ibn Unays, from ‘Abdullāh ibn Unays himself. His account is similar.⁸⁰²

The Prophet ﷺ also wrote to Abū Mūsā al-‘Asharī and aṭ-Ṭāhir ibn Abū Hālah رضى الله عنه ordering them to deal with, either by fighting or assassination, al-Aswad al-‘Ansī who had claimed prophethood, as was narrated by aṭ-Ṭabarī رحمه الله in his *Tārīkh* (2/248). Al-Aswad was thereafter assassinated by Fayrūz al-Fārisī رضى الله عنه and, as related by aṭ-Ṭabarī (2/250&251), revelation descended upon the Prophet ﷺ the very same night. The next morning he ﷺ informed his Companions رضى الله عنه:

⁸⁰¹ Al-Albānī said in his commentary on *Fiqh as-Sīrah* (p.285), “It was narrated by Abū Dāwūd (1249), al-Bayhaqī, and Aḥmad (16047) via ibn ‘Abdullah ibn Unays who heard from his father, and the author said in his *Tafsīr* (1/295), ‘It’s *Isnād* is *Jayyid* (good).’ *Al-Ḥāfidh* ibn Ḥajar said in *al-Fath* (*al-Bārī*) (2/350), ‘It’s *Isnād* is *Ḥasan* (acceptable).’” Its version in *Sunan Abī Dāwūd: The Book of Prayer* (1249) is *Ṣaḥīḥ*, although its wording differs slightly from Aḥmad’s

⁸⁰² Also in *The Life of the Prophet Muhammad: Al-Sīra al-Nabawiyyah* (3/190&191)

قُتِلَ الْعَنْسِيُّ الْبَارِحَةَ، فَتَلَّهُ رَجُلٌ مُبَارَكٌ مِنْ أَهْلِ بَيْتِ مُبَارَكِينَ، قِيلَ:
وَمَنْ هُوَ؟ قَالَ: فَيْرُوزُ، فَارَ فَيْرُوزُ!

“Al-‘Ansī was killed last night. The one who killed him was a blessed man from a blessed household.” Someone asked, “And who is he?” The Prophet said, “Fayrūz. Fayrūz has indeed achieved success!”⁸⁰³

As is evident, all of these assassinations differed from common murder in that they all were undertaken for other than worldly purposes. Rather, they were all within the framework of *Jihād*. Additionally, they all employed deception and as such, are in line with the Prophet’s ﷺ words recoded in *Ṣaḥīḥ al-Bukhārī: The Book of Jihād and Expeditions* (3030):⁸⁰⁴

الْحَرْبُ خَدْعَةٌ

“War is deception.”

Ibn Ḥajar رَحِمَهُ اللَّهُ comments in *Fath al-Bārī* (6/158), “The basis of ‘deception’ is to indicate one thing while hiding another. Contained within (the above *Hadīth*) is the encouragement to take precautionary measures during warfare, and the recommendation to deceive the disbelievers. Also, the one who is not proficient in it, is not safe from himself being deceived (by his enemy).” Ibn Ḥajar (6/158) later quotes ibn al-‘Arabī رَحِمَهُ اللَّهُ as saying, “Deception in war involves displaying one thing while hiding another, (preparing) ambushes and traps, and their likes.”

⁸⁰³ Refer to *The Biography of Abu Bakr As-Siddeeq* رَحِمَهُ اللَّهُ (pp.397-405)

⁸⁰⁴ Similar narrations are also present in *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1739), *Sunan Abī Dāwūd: The Book of Jihād* (2636), *al-Jāmi’ at-Tirmidhī: The Chapters on the Jihaad of the Messenger of Allāh* ﷺ (1675), and *Musnad Aḥmad: Musnad Jābir ibn ‘Abdullāh* (14177)

In *al-Minhāj Sharḥ al-Jāmi' aṣ-Ṣaḥīḥ* (4/1821) an-Nawawī رَحِمَهُ اللهُ mentions, “There is a consensus on the permissibility of deceiving the disbelievers during war in any way possible, except if it involves the breaking of a treaty or a covenant - in which case it is not permissible.”

Accordingly, as recognised by believer and disbeliever alike, from the deception that war calls for is targeted assassinations, which if done correctly, are a major factor weakening the morale and capabilities of an enemy force. In addition, it can also serve as a factor preventing large-scale bloodshed and loss of life, along with many of the other ‘horrors’ associated with conventional warfare. Thus, the Messenger of Allāh ﷺ utilised this tactic on a number of occasions throughout his decade-long war with the disbelievers of the Arabian Peninsula, and likewise did his Companions after him رَضِيَ اللهُ عَنْهُمْ. This was a part of his overall military strategy, which comprised of striking at the disbelievers *Centres of Gravity*,⁸⁰⁵ as is possible to deduce from the noble verse in *Sūrah an-Naḥl* (16:26) wherein the Exalted says:

﴿قَدْ مَكَرَ الَّذِينَ مِنْ قَبْلِهِمْ فَأَتَى اللَّهُ بُيُوتَهُمْ مِنَ الْفَوَاعِدِ
فَخَرَّ عَلَيْهِمُ السَّقْفُ مِنْ فَوْقِهِمْ وَأَتَاهُمُ الْعَذَابُ مِنْ حَيْثُ لَا
يَشْعُرُونَ﴾ (٢٦)

Those before them had already plotted, but Allāh came at [i.e., uprooted] their building from the foundations, so the roof fell upon them from above

⁸⁰⁵ Clausewitz in *On War*, defined Centres of Gravity (COGs): “A centre of gravity is always found where the mass is concentrated most densely. It presents the most effective target for a blow; furthermore, the heaviest blow is struck by the centre of gravity.” They can be both moral and physical entities. (in Iron and Strange, *Understanding Centres of Gravity and Critical Vulnerabilities: Part 1*, pgs.2&3)

them, and the punishment came to them from where they did not perceive.

Lastly, even if it was possible to argue that the *Sharī'ah* does not permit assassination in-and-of-itself, then it would nevertheless remain permitted due to the undeniable use of this tactic by the disbelievers against the believers. Hence, Allāh ﷻ says:

﴿وَالْحُرْمَتُ قِصَاصٌ فَمَنْ أَعْتَدَى عَلَيْكُمْ فَأَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا أَعْتَدَى عَلَيْكُمْ﴾

and for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you.

CHAPTER SUMMARY

Assassination refers to the killing of an opponent, for other than personal motives, outside of the battlefield. It also carries the connotations of employing deception and indirect methods to achieve one's purpose, such as those employed by the unit headed by the noble Companion Muḥammad ibn Maslamah رَضِيَ اللَّهُ عَنْهُ.

Evidence for the legitimacy of assassination in Islām is present in numerous instances throughout the Book of Allāh, according to the generality of the verses wherein Allāh commands the believers to kill the disbelievers, such as in the *Verse of the Sword*, wherein He ﷻ says:

﴿فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ﴾

kill the polytheists wherever you find them

Moreover, the Prophet ﷺ ordered the assassination a number of disbelievers during his lifetime. Notable among these cursed individuals were:

- Ka'b ibn as-Ashraf
- Abū Rāfi'
- Khālīd ibn Sufyān al-Hudhalī, and
- Aswad al-'Ansī

CHAPTER 33

عمليات التدمير والتفريب

SABOTAGE OPERATIONS

According to the US Department of Defense, sabotage is defined as, “An act or acts with intent to injure, interfere with, or obstruct the national defense of a country by wilfully injuring or destroying, or attempting to injure or destroy, any national defense or war materiel, premises, or utilities, to include human and natural resources.”⁸⁰⁶

The origins of this type of operation in Islām dates back to the Prophet's ﷺ burning the date palms and orchids of the Jewish tribe, Banī an-Naḍīr, in the fourth year *Hijrī*. In his *Tafsīr* (9/551) Ibn Kathīr quotes at-Ṭabarī رَحِمَهُمُ اللَّهُ as saying, “Banī an-Naḍīr sent a message to the Messenger saying that he used to outlaw corruption in the earth, so why did he order that their trees be cut down?” Upon this, Allāh Himself responded in *Sūrah al-Ḥashr*, or as ibn ‘Abbās رَحِمَهُمُ اللَّهُ called it - *Sūrah Banī an-Naḍīr* (59:5):⁸⁰⁷

⁸⁰⁶ (US) Department of Defense Dictionary of Military and Associated Terms (2002), (p.381)

⁸⁰⁷ Refer to *Tafsīr ibn Kathīr* (9/542)

﴿مَا قَطَعْتُمْ مِنْ لَيْنَةٍ أَوْ تَرَكْتُمُوهَا قَائِمَةً عَلَى أُصُولِهَا فَبِإِذْنِ اللَّهِ وَلِيُخْزِيَ الْفَاسِقِينَ﴾

Whatever you have cut down of [their] palm trees or left standing on their trunks - it was by permission of Allāh and so He would disgrace the defiantly disobedient.

In *Ṣaḥīḥ Muslim: The Book of Jihād and Expeditions* (1746), ‘Abdullaah ibn ‘Umar رَضِيَ اللَّهُ عَنْهُمَا narrates:

«أَنَّ رَسُولَ اللَّهِ ﷺ حَرَّقَ نَخْلَ بَنِي النَّضِيرِ، وَقَطَعَ، وَهِيَ الْبُؤَيْرَةُ»، زَادَ قُتَيْبَةُ، وَابْنُ رُمَحٍ فِي حَدِيثِهِمَا: فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: ﴿مَا قَطَعْتُمْ مِنْ لَيْنَةٍ أَوْ تَرَكْتُمُوهَا قَائِمَةً عَلَى أُصُولِهَا فَبِإِذْنِ اللَّهِ وَلِيُخْزِيَ الْفَاسِقِينَ﴾

“The Prophet ﷺ cut down and burnt the date palms of Banī Naḍīr.” Qutaybah and ibn Rumḥ added in their narrations, “Thus Allāh ﷻ revealed (59:5): ***Whatever you have cut down of [their] palm trees or left standing on their trunks - it was by permission of Allāh and so He would disgrace the defiantly disobedient.***

In his commentary on the narration detailing this incident, an-Nawawī رَحِمَهُ اللَّهُ says in *al-Minhāj* (4/1825), “In this *Ḥadīth* is the permissibility of cutting down and burning the trees of the disbelievers. This is the stance of ‘Abd ar-Raḥmān ibn al-Qāṣim, Nāfi’ the freed slave of ibn ‘Umar, Mālik, ath-Thawrī, Abū Ḥanīfah, ash-Shāfi’ī, Aḥmad, Ishāq, along with the majority (of scholars). However, Abu Bakr *aṣ-Ṣiddīq*, al-Layth ibn Sa’d, Abī Thawr, and al-Awzā’ī رَضِيَ اللَّهُ عَنْهُمْ, in a narration from them said it was not permissible.”

Aṣ-Ṣan'ānī رَحِمَهُ اللهُ said about the same *Ḥadīth* in *Subul as-Salām* (2/1049&50), “(It) is evidence of the permissibility of destroying the wealth of the *Ahl al-Ḥarb* by felling and burning due to a benefit (that contains) [...]. The majority (of scholars) held that it is permissible to burn-down and destroy (property) in the land of the enemy. However, al-Awzā'ī and Abū Thawr disliked it, citing Abū Bakr's advice not to do so. In reply to this is that he (only forbade it due to the fact that he) saw benefit in leaving them (intact) as he foresaw they would (soon) fall into the hands of the Muslims.”

Al-Qurṭubī رَحِمَهُ اللهُ says in his *Tafsīr* (9/272), “The people (i.e. the scholars) have differed over destroying and burning the enemy's land(s) and felling their fruit producing crops, having two positions. The **first** holds that it is permissible, and this is the stance of (*Imām Mālik* رَحِمَهُ اللهُ) in *al-Mudawwanah*. While the **second** holds that if the Muslims know that they will capture the land, they should refrain from doing so. However, if they are harmed by them (i.e. the crops and trees) they may do so, and this is Mālik's most apparent opinion, as well as it being the Shāfi'ī school's. Ibn al-'Arabī views the first position as being correct, due to the fact that the Messenger of Allāh ﷺ knew that the date palms of Banī an-Naḍīr would end up as his. Nevertheless, he still cut and burnt them to crush their morale, as this would hasten their leaving (of their land and fortresses). And to destroy some wealth in order to preserve the remainder is permissible in the *Sharī'ah*, and according to intellect.”

Ibn an-Nuḥḥās رَحِمَهُ اللهُ says in *Mashāri' al-Ashwāq* (pgs.1024&1025), “The crops and trees in *Dar al-Ḥarb* can be divided into three categories:

1. Those that should not be left due to the need to destroy them, such as those (trees, etc.) close to their fortresses that prevent us from engaging them (i.e. the disbelievers). Alternatively, those required to fell in order to clear a path, facilitate

fighting, to conceal a catapult, or other than these things. Or in the case that they have done so to us (beforehand), and in which case we can similarly do to them as a deterrent. Thus, we do not know of any difference of opinion regarding (this category's) permissibility.

2. Those that if destroyed, will harm the Muslims due to the benefit of leaving them because of their fruits. Alternatively, due to it being customary between us (and our enemies) that we do not do such things, and as such in this case, if we did so with them, they would do so with us. Consequently, it becomes *Ḥarām* in the instance wherein it would entail a (overriding) harm for the Muslims.
3. Those neither harming nor benefiting the Muslims, nor angering or harming the disbelievers. According to stance of ash-Shāfi'ī and in one report from Aḥmad, it is permissible to destroy them. However, if it is strongly suspected that the Muslims will conquer the area, it is disliked.”⁸⁰⁸

Ash-Shāfi'ī رحمه الله says in *al-Umm* (4/306), “Everything that does not have a soul is permissible to destroy using any means deemed appropriate [...]. (However), if it is felt that the land will become *Dār al-Islām*, or *Dār al-'Ahd*, wherein the rule of Islām will govern them (i.e. the disbelievers). I say it is better to refrain from destroying their wealth in order that it falls into the *Ghanīmah* - if Allāh the Exalted wills. Although it is not *Ḥarām* upon (the *Mujāhidīn*) to burn or demolish (the land and disbeliever's property) before it falls into the hands of the Muslims, or they agree to pay the *Jizyah*.”

The *Imām* then goes on to respond to some doubts raised by those that cite Abu Bakr's رضي الله عنه forbiddance of burning the trees and homes during his caliphate. He argues that, “It is suspected -

⁸⁰⁸ Refer to *al-Mughnī* (9/289-292) (7580-7584), *Mughnī al-Muḥtāj* (6/36-38), and *Kashshāf al-Qinā'*

and Allāh knows best - that Abū Bakr heard the Prophet ﷺ mention the conquests of *ash-Shām*. As such, he was certain of that transpiring and thus ordered that neither habituated areas, nor fruit bearing trees should be destroyed, as they would eventually belong to the Muslims. Not that he thought that it was *Harām*, as he was with the Prophet ﷺ when he burned (the lands of) (Banī) an-Naḍīr, Khaybar, and at-Ṭā'if hoping they would then have to surrender to him (sooner than they would have done so otherwise), and also the proof in Allāh's revelation regarding the Prophet's ﷺ actions."

The statements of the scholars also make clear, especially that of ash-Shāfi'ī رحمه الله، that this action of destroying, burning, flooding, and the like is not restricted to trees and plants. Rather anything that yields the same economic benefits, provides cover and concealment, obstructs the Muslims' fields of observation and fire, or impedes their movement or war effort falls under the same ruling, as 'the ruling revolves around the reason for issuing it.'

Thus today's equivalents, such as economic targets, bridges and critical infrastructure, real estate obstructing fields of observation and fire, power lines and stations, roads and rail networks, water treatment facilities, gas pipelines, landing ships and docs, airports and landing strips, etc. Likewise, anything that would aid them in their fight against the Muslims, or would hasten their defeat or surrender, or would negatively affect their morale and will to fight, all fall under this ruling found in *Sūrah al-Hashr* (59:5), and Allāh knows best. He ﷻ says:

﴿مَا قَطَعْتُمْ مِنْ لَيْنَةٍ أَوْ تَرَكْتُمُوهَا قَائِمَةً عَلَى أُصُولِهَا فَبِإِذْنِ اللَّهِ وَلِيُخْرِىَ الْفَاسِقِينَ﴾

Whatever you have cut down of [their] palm trees or left standing on their trunks - it was by permission of

Allāh and so He would disgrace the defiantly disobedient.

Accordingly, sabotage operations fall into four categories:

1. Operations in *Dār al-Harb* directed at property belonging to the *Ahl al-Harb* that the Muslims do not think, or intent to conquer in the near future.

In this situation there is no difference of opinion in the permissibility of destroying anything that's destruction benefits the Muslims, or harms the disbelievers, unless doing so would present a clear harm to the Muslims.

2. Same as the above, however the Muslims think that they will - by the permission of Allāh - gain dominance over the area(s) in the near future.

This should be left, although according to ash-Shāfi'ī it is permissible to destroy up until the point of the Muslims gaining control over it.

3. Operations in *Dār al-Harb* against property currently belonging to the Muslims, or that which belonged to them but was appropriated by the disbelievers.

This is the case for the majority of *Jihādī* (open) fronts in the Muslim world, wherein apostate regimes and/or invading occupiers have occupied the Muslims' land and resources by force. Accordingly, this should be safeguarded as much as is possible so as to not destroy Muslims' property unjustly, in addition to retaining public support for the *Jihād* and *Mujāhidīn*. In such a case the property takes a similar, although less stringent rule, to that of Muslim human shields.

4. That which must be destroyed as a necessity of war.

According to the principle, necessity permits the impermissible, it must be destroyed regardless of the owner(s). In addition, according to the general, or greater benefit, taking precedence over the individual or lesser benefit, it is also permissible.⁸⁰⁹ Evidence for this is present in the incident in which the Prophet ﷺ, on his route to Uḥud, led the Muslim army through the farmland of a blind hypocrite named Mirba' ibn Qayḍī damaging it.⁸¹⁰ Ibn Qayyim رحمه الله says about this incident in *Zād al-Ma'ād* (2/67), “It is permissible for the *Imām* and his army to traverse through the private property of his followers if it happens be on his route, even if the owner is not pleased (i.e. he withholds his consent).”

Nevertheless, if the *Mujāhidīn* destroy Muslim property and they are able to, they should endeavour to compensate the owner(s) for their loss, or at least offer an explanation and their apologies for their actions. In an attempt to mitigate any harm caused to the believers by their actions, and seeking to prevent the alienation of the Muslim masses from the *Jihād* - and Allāh ﷻ know best.

⁸⁰⁹ This is accordance with the principle(s) outlined by as-Sa'dī in *al-Qawā'id al-Fiqhiyyah* (pp.118-121):

فَإِنْ تَرَاخُمُ عَدَدُ الْمَصَالِحِ، يُقَدَّمُ الْأَعْلَى مِنَ الْمَصَالِحِ
وَضِدُّهُ تَرَاخُمُ الْمَفَاسِدِ، يُرْتَكَبُ الْأَدْنَى مِنَ الْمَفَاسِدِ

“If a number of benefits clash, then the greatest of them is given precedence. And the opposite is true for the harms; the least of them is to be undertaken.”

⁸¹⁰ Refer to *The Noble Life of the Prophet ﷺ* (2/1105-1107)

CHAPTER SUMMARY

Sabotage operations refer to those operations in which the believers, as a tactic of *Jihād*, deliberately destroy the wealth and property of the disbelievers, or that which provides cover and concealment for the enemy, obstructs the Muslims' fields of observation and fire, or impedes their movement or war effort.

The basis for the permissibility of this act is found in the actions of the Prophet ﷺ in his battle against Banī an-Nadhīr, confirmed by Allāh's ﷻ words in *Sūrah al-Hashr* (59:5):

﴿مَا قَطَعْتُمْ مِنْ لَيْنَةٍ أَوْ تَرَكْتُمُوهَا قَائِمَةً عَلَى أُصُولِهَا فَبِإِذْنِ اللَّهِ وَلِيُخْزِيَ الْفَاسِقِينَ﴾

Whatever you have cut down of [their] palm trees or left standing on their trunks - it was by permission of Allāh and so He would disgrace the defiantly disobedient.

Imām ash-Shāfi'ī رَحِمَهُ اللَّهُ said concerning the issue, "Everything that does not have a soul is permissible to destroy using any means deemed appropriate [...]. (However), if it is felt that the land will become *Dār al-Islām*, or *Dār al-'Ahd*, wherein the rule of Islām will govern them (i.e. the disbelievers). I say it is better to refrain from destroying their wealth in order that it falls into the *Ghanīmah* - if Allāh the Exalted wills.

All praises are due to Allāh, this is the completion of *Fiqh of Jihād: Understanding the Obligation*.

We ask Allāh that He causes whatever is contained within these pages to be beneficial knowledge, and that He gives us the ability to retain, act upon, and convey whatever we have learnt so it may be evidence for us, and not against us, on the Day of Judgement.

Everything correct in this work is undoubtedly from none other than the grace and bounty of Allāh ﷻ alone, while any mistakes are from myself and the whisperings of the accursed Satan.

Please don't forget the *Mujāhidīn* and the Muslim POWs in your sincere and righteous supplications, for Allāh is certainly competent over all affairs.

﴿رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إَصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ ۖ وَاعْفُ عَنَّا وَاعْفِرْ لَنَا وَارْحَمْنَا أَنْتَ مَوْلَانَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ ﴿٢٨٦﴾﴾

“Our Lord, do not impose blame upon us if we have forgotten or erred. Our Lord, and lay not upon us a burden like that which You laid upon those before us. Our Lord, and burden us not with that which we have no ability to bear. And pardon us; and forgive us; and have mercy upon us. You are our protector, so give us victory over the disbelieving people.”

And all praise is due to Allāh, the Lord of all that exists

**APPENDIX (a):
‘UMAR’S CONTRACT WITH THE AHL ADH-
DHMIMMAH**

Ibn Kathīr رَحِمَهُ اللهُ relates in his *Tafsīr* (4/406&407) on the noble verse in *Sūrah at-Tawbah* (9:29):

The scholars of *Ḥadīth* narrated from ‘Abd ar-Raḥmān bin Ghanm al-Ash’arī that he said, “I recorded for ‘Umar bin al-Khaṭṭāb رَضِيَ اللهُ عَنْهُ, the terms of the treaty of peace he conducted with the Christians of *Ash-Shām*:

‘In the Name of Allāh, Most Gracious, Most Merciful.

This is a document to the servant of Allāh ‘Umar, the Leader of the faithful, from the Christians of such-and-such city. When you (Muslims) came to us, we requested safety for ourselves, children, property, and followers of our religion. We made a condition on ourselves that we will neither erect in our areas a monastery, church, or a sanctuary for a monk, nor restore any place of worship that needs restoration nor use any of them for the purpose of enmity against Muslims.

We will not prevent any Muslim from resting in our churches whether they come by day or night, and we will open the doors (of our houses of worship) for the wayfarer and passer-by. Those Muslims, who come as guests, will enjoy boarding and food for three days. We will not allow a spy against Muslims into our churches and homes or hide deceit (or betrayal) against the Muslims. We will not teach our children the Qur’ān, publicize practices of *Shirk*, invite anyone to *Shirk*, or prevent any of our people from embracing Islām if they choose to do so.

We will respect Muslims, move from the places we sit in if they choose to sit in them. We will not imitate their clothing, caps, turbans, sandals, hairstyles, speech, nicknames and title names, or ride on saddles, hang swords on our shoulders, collect weapons of any kind, or carry these weapons. We will not encrypt our stamps in Arabic, or sell alcohol. We will have the front of our hair cut, wear our customary clothes wherever we are, wear belts around our waist, refrain from erecting crosses on the outside of our churches, and demonstrating them and our books in public in Muslim fairways and markets.

We will not sound the bells in our churches, except discretely, or raise our voices while reciting our holy books inside our churches in the presence of Muslims, nor raise our voices (with prayer) at our funerals, or light torches in funeral processions in the fairways of Muslims, or their markets. We will not bury our dead next to Muslim dead, or buy servants who were captured by Muslims. We will be guides for Muslims and refrain from breaching their privacy in their homes.'

When I gave this document to 'Umar, he added to it:

'We will not beat any Muslim. These are the conditions that we set against ourselves and followers of our religion in return for safety and protection. If we break any of these promises that we set for your benefit against ourselves, then our *Dhimmah* (promise of protection) is broken and you are allowed to do with us what you are allowed of people of defiance and rebellion.'"⁸¹¹

⁸¹¹ Also in *al-Muḥallā* (7/346)

**APPENDIX (b):
THE CONVERSATION BETWEEN DURAYD
AND MĀLIK IBN ‘AWF PRIOR TO THE
BATTLE OF ḤUNAYN**

Imām ibn Kathīr رحمه الله recounts in *The Life of the Prophet Muḥammad* (3/438&439):

Ibn Ishāq’s account continued, “When he had made the decision to attack the Messenger of Allāh ﷺ he had the people bring their possessions along with their women and their children with them. When they halted at Awṭas, his force gathered around him; among them was Durayd ibn aṣ-Ṣummah in a kind of howdah in which he was being borne.

When they halted, Durayd asked, ‘In which valley are you?’ ‘In Awṭas,’ they replied. He commented, ‘A fine place for cavalry! It’s not hilly with rocks, nor is it soft ground. Why is it I hear the grunting of camels, the braying of donkeys, the crying of babies, and the bleating of sheep?’

They replied that Mālik ibn ‘Awf had the force bring their possessions, women and children with them. ‘And where is Mālik?’ asked Durayd. ‘He is here,’ they told him and summoned him. Durayd then said to him, ‘Mālik, you have become your people’s leader and this is a day that will greatly influence the future. Why is it I hear the grunting of camels, the braying of donkeys, the crying of babies, and the bleating of sheep?’

He replied, ‘I had the people bring their children and possessions with them.’ ‘Why was this?’ Durayd asked. Mālik replied, ‘I wanted every man to have his family and possessions behind him so that he would fight for them.’

On hearing this, Durayd made a sound of disapproval and commented, 'You cowardly sheep grazer! Would anything ever turn around someone in retreat? If the battle is to go well, it will be only men with swords and lances who do you good. If the battle goes badly, you'll be disgraced with regards to your family and possessions anyway.'

Durayd then asked, 'What have Ka'b and Kilāb done?' 'No one from them is present,' he replied. 'So then skill and courage are absent! If it were to be a day of fine, noble deeds, Ka'b and Kilāb would not miss it. I wish you had done the same as them! Who is attending with you?' They told him that 'Amr ibn 'Āmir and 'Awf ibn 'Āmir were present. He responded, 'Well, those two branches of 'Āmir will do neither good nor harm.' He then said, 'Mālik, you've done nothing (good) by sending ahead the main force of Hawāzin to face up to the cavalry.'

Durayd then told Mālik ibn 'Awf, 'Send them up high to some inaccessible area of their people's territory, and then meet the turncoat apostates (i.e. the Muslims) on horse. If the battle goes in your favour, then your people behind you can join you. If it goes against you, then you will have saved your families and possessions.' Mālik replied, 'By Allāh, I will not do that! You've grown old and so has your mind!'

He went on, 'Hawāzin, either you obey me, or I'll press myself down on this sword until it comes out through my back!' He hated Durayd to have any say or credit. They said they would obey him. Durayd then said, 'This is a battle in which I did not participate, nor did I miss it.' He then spoke the following verses,

'How I wish I were a youth once more! I would speed forth into the battle

I would lead on long-maned horses as though they were young donkeys'...

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